34.

SUPREME COURT OF THE UNITED STATES.

No. 154.

RUFUS ALLEN, GEORGE W. ALLEN, EDWARD P. ALLIS, WILLIAM ALLEN, AND CYRUS WHITCOMB, Lib'ts and App'ts,

vs.

HENRY L. NEWBERRY, CLAIMANT OF THE STEAMBOAT "FASHION," HER ENGINE, MACHINERY, &C.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE DISTRICT OF WISCONSIN.

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UNITED STATES OF AMERICA,
District of Wisconsin, ss.

At a special term of the District Court of the United States of America for the District of Wisconsin, begun and held, according to law, at the City of Milwaukee, on the first Monday of November in the year of our Lord one thousand eight hundred and fifty-five:

Present, the Honorable Andrew G. Miller, Judge of said Court, presiding: John R. Sharpstein, Attorney: Stephen V. R. Ableman, Marshal: B. C. Miller, Clerk;

Among other, were the following proceedings, to wit:—

RUFUS ALLEN, GEORGE W. ALLEN, EDWARD P. ALLIS, WILLIAM ALLEN, and CYRUS WHITCOMB,

vs.

THE STEAMBOAT FASHION, her engine, machinery, boats, tackle, apparel, and furniture, HENRY L. NEWBERRY, Claimant and Respondent.

In Admiralty.

Be it remembered, that heretofore, to wit, on the fourth day of August, in the year of our Lord one thousand eight hundred and fifty-four, the said Rufus Allen, George W. Allen, Edward P. Allis, William Allen, and Cyrus Whitcomb, by Benjamin Newhall, Esquire, their proctor, presented to the Court their libel against the Steamboat Fashion, her engine, machinery, boats, tackle, apparel, and furniture, in the words and of the tenor following, to wit:—

(*Libel.*)

In Admiralty.

To the Judge of the District Court of the United States for the District of Wisconsin:

Rufus Allen, of Cazenovia, in the State of New York; George W. Allen, Edward P. Allis, and William Allen, of the City of Milwaukee in said district, and Cyrus Whitcomb of Two Rivers, in said district, copartners in trade, doing business in said district under the copartnership, name, and style of the Wisconsin Leather Company, exhibit this their libel against the Steamboat Fashion, whereof Henry L. Newberry is, or lately was, master, now lying at the port of Milwaukee in said district, and within the admiralty and maritime jurisdiction of this honorable Court, her engine, machinery, boats, tackle, apparel, and furniture, and against all persons intervening for their interests therein, in a cause of contract civil and maritime.

And thereupon the said libellants do allege and articulately propound as follows, to wit:—

First. That the said Steamboat Fashion is a vessel of more than twenty tons burthen, to wit, of the burthen two hundred and fifty tons or thereabouts; and, at the time when the cause or causes of action hereinafter set forth accrued, was enrolled and licensed for the coasting trade, and was employed in the business of commerce and navigation between ports and places in different States and territories of the United States, upon the lakes and navigable waters connecting the said lakes.

Second. That during and previous to the month of June, A. D. 1854, the said Steamboat Fashion was used and employed by the owners thereof in their business of common carriers of goods and merchandise for hire, and was used and employed in the transportation of goods, wares, and merchandise on the lakes aforesaid, between the ports hereinafter named, and between the various ports on the west side of Lake Michigan.

Third. That on or about the sixth day of June, A. D. 1854, the said Steamboat Fashion, whereof the said Henry L. Newberry was master, then lying at the port of Two Rivers in said district, and being destined on a voyage upon the lakes and within the admiralty and maritime jurisdiction of this honorable Court, to wit, from the said port of Two Rivers to the port of Chicago in the State of Illinois, and to the port of Milwaukee and other ports on Lake Michigan intermediate between the said port of Two Rivers and the said port of Chicago, the libellants being the owners of fifty-six sacks of hair and five bundles of rough split leather of the value of one hundred dollars and sixty cents, truly and more particularly described in the schedule hereunto annexed, marked "A," caused the said hair and rough split leather to be shipped in good order and well conditioned on board of the said steamboat, to be carried and transported in said steamboat from said port of Two Rivers to said port of Chicago, for a certain freight to be paid by the libellants therefor; the said hair to be delivered at said Chicago on behalf of the libellants to the firm of Garner & King, and the said rough split leather to be delivered at said Chicago on behalf of the libellants to the firm of W. & G. Wright; and the said Henry L. Newberry, as master of the said steamboat, then and there received the said hair and rough split leather on board of the said steamboat, to be by him for such freight safely and securely transported in said steamboat from said Two Rivers to said Chicago and there delivered in manner aforesaid.

Fourth. That the libellants, on the same day and at said port of Two Rivers, being also the owners of forty-three rolls of finished leather, and two hundred and thirty-two sides of sole leather, of the value of two thousand eight hundred and ninety-one dollars and thirty-eight cents; which said finished leather and sole leather, and the parcels, weights, and values thereof, are truly and more particularly set forth in the schedule hereto annexed, marked "B;" caused the said finished leather and sole leather to be likewise shipped in good order and well conditioned on board the said steamboat Fashion,

on the said voyage, to be also carried and transported on the lakes in the said steamboat, from the said port of Two Rivers to the port of Milwaukee in said district, and to be there safely and securely delivered to the said libellants, for a certain freight to be paid by the libellants therefor: And the said master of the said steamboat then and there received the said finished leather and sole leather on board of the said steamboat, to be transported therein by him as such master, for such freight from said Two Rivers to said Milwaukee, and to be there delivered as aforesaid to the libellants.

Fifth. That the libellants received from the master of the said steamboat no bill or bills of lading for the goods so shipped by them as aforesaid on board of the said steamboat; but the same were shipped by the libellants on said steamboat by virtue of a verbal contract theretofore made between the libellants and the master and owners of the said steamboat, as such common carriers as aforesaid, whereby the said master was to safely and securely carry and deliver, between the ports hereinbefore named, all goods and merchandise belonging to the libellants, and shipped by them on board of said steamboat, for a freight of one shilling per one hundred pounds.

Sixth. That the said steamboat Fashion shortly afterwards departed on her said voyage. But the said Henry L. Newberry, master as aforesaid, not regarding his duty in these respects, did not carry and deliver the said hair and rough split leather at said Chicago, nor the said finished leather and sole leather at said Milwaukee, according to his said undertaking or undertakings, hereinbefore set forth: And on the contrary thereof, these libellants aver that the said master, his mariners, servants, and agents, so negligently conducted themselves with respect to the same, and showed such want of care in the stowage and carriage thereof, and so negligently and improperly managed and navigated the said steamboat, and the said steamboat, her engine, machinery, furniture, rigging, and equipments were so imperfect and insufficient that, during such voyage, and by reason of such negligence, want of care in the stowage and carriage, improper management and navigation, and imperfect and insufficient steamboat, engine machinery, furniture, rigging, and equipments, the said hair, rough split leather, finished leather, and sole leather became and were wholly lost to the libellants. By reason whereof, the libellants have sustained damage to the amount of two thousand nine hundred and ninety-one dollars and ninety-eight cents, for which they claim reparation in this suit.

Seventh. That all and singular the premises are true.

Wherefore the libellants pray that process in due form of law may issue against the said steamboat Fashion, her engine, machinery, boats, tackle, apparel, and furniture. And that all persons having any interest therein may be cited to appear and answer upon oath all and singular the matters aforesaid. And that this honorable Court will pronounce for their aforesaid demand, and decree compensation to be made to the libellants, and their aforesaid demand to be

paid with costs. And that the libellants may have such other and further relief and redress as to right and justice may appertain, and as this Court is competent to give in the premises.

RUFUS ALLEN,
GEO. W. ALLEN,
EDW. P. ALLIS,
WILLIAM ALLEN,
CYRUS WHITCOMB.
By EDW. P. ALLIS and
GEO. W. ALLEN,
Two of the firm of the Wis. Lea'r Co.

BENJ. NEWHALL,
Proctor.

A. C. MAY,
Advocate.

District of Wisconsin, ss.

Edward P. Allis and George W. Allen, of said district, two of the libellants in the foregoing libel, being duly sworn, severally say that they have heard the foregoing libel subscribed by them read, and know the contents thereof, and that the matters therein stated are true to the best of their knowledge, information, and belief.

GEO. W. ALLEN,
EDW. P. ALLIS.

Sworn to this 3d day of August, 1854, before me,
B. K. MILLER,
Clerk.

(*Schedule "A."*)

Schedule "A," referred to in the foregoing libel.

Shipped June 6th, 1854, on steamboat Fashion, for Chicago, as follows:—

56 sacks hair, 60 c.,	$33 60
Marked "Gurnee & King, Chicago."	
5 bundles rough splits, 536 lbs., 1 s.,	67 00
Marked W. & G. Wright, Chicago.	
	$100 60

(*Schedule "B."*)

Schedule B, referred to in the foregoing libel.

Shipped June 6th, 1854, on steamboat Fashion, marked "The Wisconsin Leather Company, Milwaukee," as follows:—

43 rolls of finished leather, consisting of	
265 sides upper leather, 20 s.	$662 50
119 " harness " 2528 lbs., 24 c.	606 72

12 sides band leather, 277 lbs., 24 c.	66 24
42 hog skins, 20 s.	105 00
108 slaughter kips, 1026 lbs., 60 c.	615 60
57 sides Bahia sole leather, 674 lbs., 18 c.	121 32
175 sides B. Ayres sole leather, 2975 lbs., 24 c.	714 00
	$2,891 38

And also same day filed their stipulation for the payment of costs, which said stipulation is in the words and figures following, to wit:—

(*Libellants' Stipulation.*)

DISTRICT COURT OF THE UNITED STATES,
for the District of Wisconsin.

Whereas, a Libel was filed in this Court, on the fourth day of August, in the year of our Lord one thousand eight hundred and fifty-four, by Rufus Allen, George W. Allen, Edward P. Allis, William Allen, and Cyrus Whitcomb, against The Steamboat Fashion, her engine, machinery, boats, tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned, and praying that process in due form of law may issue, and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the *Libellants* or their sureties, execution may issue against their goods, chattels, and lands, for the sum of *two hundred and fifty dollars.*

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the *Stipulators* undersigned shall be, and are bound, in the sum of *two hundred and fifty dollars*, conditioned that the *Libellants* above named shall abide by the final decree entered in the cause, and shall pay all such costs as shall be awarded against by this Court, or in case of appeal, by the Appellate Court.

GEO. W. ALLEN,
EDW. P. ALLIS,
ALBERT WISE.

Taken and acknowledged this fourth day of August, 1854, before me,
B. K. MILLER,
U. S. Commissioner.

District of Wisconsin, ss.

Albert Wise, party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of *Five Hundred Dollars*, over and above all his just debts and liabilities.

ALBERT WISE.

Sworn to this fourth day of August, 1854, before me,
B. K. MILLER,
U. S. Commissioner.

(*Order for Process and Advertisement.*)

Whereupon, it is ordered by the Court that a monition issue to the Marshal, returnable on the fourteenth day of August, inst., at eleven o'clock in the forenoon of the said day, and that this Court will, on that day and time, proceed to the hearing and trial thereof. And it is further ordered, that notice be given by advertisement, published in the "Morning News," a daily paper published in the City of Milwaukee, and by notices put up in the most public places at and near the place of trial for at least eight days.

Whereupon a monition issued, as follows:—

(*Monition.*)

District of Wisconsin, ss:

The President of the United States of America to the Marshal of the District of Wisconsin, greeting:—

[SEAL.] Whereas, a libel hath been filed in the District Court of the United States for the District of Wisconsin, on the fourth day of August, in the year of our Lord one thousand eight hundred and fifty-four, by Rufus Allen, George W. Allen, Edward P. Allis, William Allen, and Cyrus Whitcomb, against the steamboat Fashion, her engine, machinery, boats, tackle, apparel, and furniture, for the reason and causes in the said libel mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said steamboat or vessel, her tackle, &c., may be cited in general and special to answer the premises and all proceedings being had that the said steamboat or vessel, her tackle, &c., may for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellants. You are therefore hereby commanded to attach the said steamboat or vessel, her tackle, &c., and to detain the same in your custody, until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing, or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said Court, to be held in and for the District of Wisconsin, on the fourteenth day of August, inst., at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegation in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Andrew G. Miller, Judge of the said Court at Milwaukee, in the District of Wisconsin, this 4th day of

August, in the year of our Lord one thousand eight hundred and fifty-four, and of our Independence the seventy-ninth.

B. K. MILLER,
Clerk.

BENJAMIN NEWHALL,
Proctor for Libellants.

And same day, came Henry L. Newberry as the claimant of the said steamboat Fashion, and presented his stipulation with George D. Dousman as surety that the said claimant shall abide by and pay the money awarded by the final decree rendered by this Court, or in case of appeal by the Appellate Court. Which said stipulation is as follows:—

(*Claimant's Stipulation.*)

DISTRICT COURT OF THE UNITED STATES
for the District of Wisconsin.

In Admiralty.

Whereas, a libel was filed on the fourth day of August in the year of our Lord one thousand eight hundred and fifty-four, by Rufus Allen, George W. Allen, Edward P. Allis, William Allen, and Cyrus Whitcomb, against The Steamboat Fashion, her engine, machinery, boats, tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned. And whereas the said steamboat Fashion, her engine, machinery, boats, tackle, apparel, and furniture, is in the custody of the Marshal under the process issued in pursuance of the prayer of said libel, as appears from said monition now on file in said Court.

Appearing personally Henry L. Newberry as the claimant of the said steamboat, and produced for surety George D. Dousman, and the said Henry L. Newberry and George D. Dousman submitting themselves to the jurisdiction of the Court, bound themselves, their heirs, executors and administrators, in the sum of six thousand dollars, unto the said Rufus Allen, George W. Allen, Edward P. Allis, William Allen, and Cyrus Whitcomb, that the said Henry L. Newberry shall abide and answer the decree of the said Court in the aforesaid cause: and unless he shall so do, they do hereby severally consent that execution shall issue forth against them, their heirs, executors and administrators, goods and chattels, lands and tenements, wheresoever the same may be found, to the value of the sum above mentioned.

HENRY L. NEWBERRY,
GEORGE D. DOUSMAN.

Taken and acknowledged, this fourth day of August, 1854, before me,

B. K. MILLER,
U. S. Commissioner.

District of Wisconsin, ss:

George D. Dousman, party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of twelve thousand dollars over and above all his just debts and liabilities.

GEORGE D. DOUSMAN.

Sworn to this fourth day of August, 1855, before me,

B. K. MILLER,
U. S. Commissioner.

Whereupon, it is ordered by the Court that a warrant of restitution issue to the Marshal to restore the said steamboat Fashion, her engine, machinery, boats, tackle, apparel, and furniture, to the said claimant, Henry L. Newberry. Whereupon a warrant of restitution issued as follows:—

(*Warrant of Restitution.*)

District of Wisconsin, ss.

The President of the United States of America to the Marshal of the District of Wisconsin, greeting:—

[SEAL.] Whereas a libel has been filed in the District Court of the United States for the District of Wisconsin, on the fourth day of August, in the year of our Lord one thousand eight hundred and fifty-four, by Rufus Allen, George W. Allen, Edward P. Allis, William Allen, and Cyrus Whitcomb, against the steamboat Fashion, her engine, machinery, boats, tackle, apparel and furniture, praying that the same may be condemned as forfeited to the said libellant; and whereas the said steamboat, &c. has been attached by the process of the said Court, in pursuance of the prayer of the libel, and is now in your custody by virtue of said process; and whereas, also, a claim has been interposed and filed in said Court by Henry L. Newberry, and such proceedings have been thereupon had, that by the sentence and decree of said Court in this cause, made and pronounced on the fourth day of August, eighteen hundred and fifty-four, the said steamboat, &c. was adjudged to belong as claimed, and was ordered to be restored to the said claimant: therefore you, the said marshal, are hereby commanded to release the said steamboat Fashion, &c. from arrest, and to deliver and return the same unto the said Henry L. Newberry. And what you have done in the premises, do you make return thereof before the said Court of Admiralty, on the fourteenth day of August inst., at eleven o'clock in the forenoon of said day, if

the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, together with this writ.

Witness, the Honorable Andrew G. Miller, Judge of the District Court of the United States of America for the District of Wisconsin, at the city of Milwaukee, in said District, this fourth day of August, in the year of our Lord one thousand eight hundred and fifty-four, and of the independence of these United States the seventy-ninth.

B. K. MILLER,
Clerk.

(*Return to Monition.*)

Which said monition was returned with the following indorsement thereon, to wit:—

In obedience to the within precept, I have, on this fourth day of August, A. D. 1854, attached the steamboat Fashion, her engine, machinery, boats, tackle, apparel, and furniture, at Milwaukee, and have given due notice to all persons claiming the same, that this Court will, on the fourteenth day of August, A. D. 1854, at eleven o'clock in the forenoon of that day, should the same be a day of jurisdiction, otherwise on the first day of jurisdiction thereafter, proceed to the trial and condemnation thereof, unless a claim should be interposed for the same, and to make their allegations in that behalf. And on this fourth day of August, the said steamboat Fashion, her engine, machinery, boats, tackle, apparel, and furniture was released from custody in obedience to the warrant of restitution hereto annexed.

S. V. R. ABLEMAN,
Marshal.

(*Return to Warrant of Restitution.*)

The said warrant of restitution was returned with the following indorsement thereon, to wit:—

In obedience to the within warrant of restitution, I have released the said steamboat Fashion, her engine, machinery, boats, tackle, apparel, and furniture, from arrest, and delivered the same as within commanded.

S. V. R. ABLEMAN,
U. S. Marshal.

August 4th, 1854.

And afterwards—to wit, on the 21st day of said month of August, A. D. 1854—came the said claimant, and filed his answer in the words and of the tenor following, to wit:—

(*Answer.*)

In Admiralty.

The answer of Henry L. Newberry, owner of the steamer Fashion, and claimant thereof in this suit, to the libel of Rufus Allen, George W. Allen, Edward P. Allis, and William Allen, against the said steamer.

And now comes the said Henry L. Newberry, owner and master of the said steamer Fashion, and for answer to the libel of the said libellants against the said steamer doth allege and propound as follows, to wit:—

First. That he, the said Henry L. Newberry, is the true and *bona fide* owner of the said steamer Fashion, and that no other person is the owner thereof.

Second. That the matters alleged in the first article of said libel are true.

Third. That the matters alleged in the second article of said libel are true.

Fourth. That the matters alleged in the third article of said libel are true, save as to the value of the articles therein mentioned; and as to which respondent has no knowledge, and cannot state.

Fifth. That the matters alleged in the fourth article of said libel are true, save as to the value of the articles therein mentioned; and as to which respondent has no knowledge.

Sixth. That the matters alleged in the fifth article of said libel are true, save in this, and which this respondent avers to be the truth, that there was excepted from this respondent's liability the dangers of lake navigation.

Seventh. That the matters and things alleged in the sixth article of said libel are not true; but, on the contrary thereof, this respondent says that although true it is that during said voyage from Two Rivers to Chicago the said merchandise mentioned in the said libel was wholly lost to the libellants, yet that said loss did not happen by or through the carelessness and negligence of this respondent, or his mariners and servants under him, but did happen and result from a peril of the sea, against which this respondent and his mariners and servants could not contend; that the circumstances attending and causing said loss are truly and substantially as follows: That said steamer Fashion left the port of Two Rivers on the evening of Tuesday, the sixth of June, 1854, on said voyage, touched at Manitowoc, and left that port the same evening. Shortly after leaving the latter port, the wind came on to blow from the north-northeast, creating a very heavy sea, in which the steamer broached to and lay in the troughs of the sea for a half hour or more, and during which time she labored hard, when she was got before the wind. It was found impossible to make Sheboygan, and the steamer was kept on a course up the lake, south by east. The gale continued during the night;

the sea increasing, and the atmosphere thick. At four o'clock, Wednesday morning, we had made no land, when the steamer was hauled up south-southwest, and afterwards made the land about ten miles south of the port of Milwaukee. At about ten o'clock A. M. of that day the flanges of the starboard paddle-wheel gave way, which rendered it useless. The large anchor was then let go with sixty fathoms chain in twenty fathoms water, to enable us to secure the wheel, to clear away which strenuous efforts were made; but they proved fruitless, owing to the sea, which continued to run very high. While in that situation, it was deemed by this respondent, and his officers and mariners under him, prudent and necessary, for the salvation of the vessel and the lives of those on board, to cast overboard the cargo. The deck load, amongst which was the merchandise of the libellants, was accordingly cast overboard; when it was found the vessel rode easier. At about five o'clock, however, she parted her chains. The disabled wheel was then lashed as best it might be under the circumstances, and worked her at great disadvantage until near ten o'clock, when, owing to her labors, her engine gave out, and would not work. The small anchor was let go, and efforts made to get her head to the wind, but of no avail; and she drifted at the mercy of the waves until about half-past two o'clock A. M. of Thursday, when she went ashore near the port of Chicago and filled. And this respondent avers that, prior to the accident aforesaid, the said steamer was tight, stanch, and true, well manned and equipped, and seaworthy in all respects. That the casting away of said deck load, and when the merchandise of said libellants had been laden according to prevailing usage and custom, and with the consent of the libellants, was at a moment of imminent peril, and was an act deemed at the time necessary for the salvation of life and property.

Eighth. That all and singular the premises are true. Wherefore the respondent prays that this Honorable Court will pronounce against the demand of the libellants, in their aforesaid libel mentioned and set forth, with costs.

HENRY L. NEWBERRY.

EMMONS & VAN DYKE,
Proctors.

District of Wisconsin, ss.

Henry L. Newberry, the respondent, being sworn, says that he has read the foregoing answer, by him subscribed, and that he knows the contents thereof, and that the same is true.

B. K. MILLER,
Clerk.

And afterwards, to wit, on the sixth day of August, A. D. 1855, the following proceedings were had, to wit: "This day came the libellants, by their advocates, and on their motion and affidavit filed,

it is ordered that they have leave to amend their libel. Which said affidavit is in the words and figures following, to wit:—

(*Affidavit.*)

District of Wisconsin, ss.

George W. Allen, of the City of Milwaukee, in said District, and one of the libellants in this cause, being duly sworn, says that deponent and the above named Edward P. Allis, drew up and prepared the account contained in the libel in this cause, of the goods shipped by the libellants on board of the steamboat Fashion, and lost in the manner set forth in said libel, and delivered the same to Mr. Newhall, the counsel for the libellants in this cause; and deponent further says that deponent and the said Edward P. Allis supposed at the time they drew up such account of the goods so lost, that the libellants could recover in this cause only the actual cost of such goods to the libellants, and that they accordingly, in consequence of such mistake as to the rights of the libellants, named in the said libel as the values of such goods only the actual cost of the same to the libellants as manufactured by the libellants, at their tannery, at Two Rivers. And deponent further says that the actual cash value at wholesale, of such goods, and of each parcel thereof, at the time of the loss of the same, was at least fifteen per cent. above the values named in said libel, and as great as the values of the same stated in the depositions of Rufus Allen, Jr. and Charles T. Bradley, taken in this cause, which depositions deponent has read. And deponent further says that this affidavit is made for the purpose of obtaining leave to amend the libel in respect to the values of the goods, as stated in said libel.

GEO. W. ALLEN.

Subscribed and sworn to before me, this 3d day of August, A. D. 1855.

B. K. MILLER,
Clerk.

And same day, to wit, August 6, 1855, came the said libellants, by their proctor, and filed amendments to the libel in this cause, in the words and of the tenor following, to wit:—

(*Amendments to Libel.*)

Amendments pursuant to the order of the Court, to the libel of Rufus Allen, George W. Allen, Edward P. Allis, William Allen, and Cyrus Whitcomb, against the Steamboat Fashion, her engine, machinery, boats, tackle, apparel, and furniture.

First. Strike out the words "one hundred dollars and sixty cents" in the third article, and insert in lieu thereof, the words "One hundred and thirty dollars and forty-four cents."

Second. Strike out the words "two thousand eight hundred and ninety-one dollars and thirty-eight cents" in the fourth article, and insert in lieu thereof, the words "Three thousand two hundred and seventy-four dollars and eleven cents."

Third. Strike out the words "two thousand nine hundred and ninety-one dollars and ninety-eight cents" in the sixth article, and insert in lieu thereof, the words "Three thousand four hundred and four dollars and fifty-five cents."

Fourth. Strike out the following words and figures in lines three, five and seven in schedule "A," annexed to said libel:—

(In line three) . . .	60c. .	$33 60
(In line five)	1s. .	67 00
(In line seven)		$100 60

and insert in lieu thereof, the following words and figures:—

(In line three). . . .	6s. .	$42 00
(In line five)	16½c. .	88 44
(In line seven)		$130 44

Fourth. Strike out the following words and figures in lines five, six, seven, eight, nine, ten, eleven, and twelve, in schedule "B," annexed to said libel:—

(In line five)	20s. .	$662 50
(In line six)	24c. .	606 72
(In line seven) . . .	24c. .	66 24
(In line eight) . . .	20s. .	105 00
(In line nine) . . .	60c. .	615 60
(In line ten)	18c. .	121 32
(In line eleven) . . .	24c. .	714 00
(In line twelve)		$2,891 38

and insert in lieu thereof, the following words and figures:—

(In line five)	23s. .	$761 88
(In line six)	27c. .	682 56
(In line seven) . . .	26c. .	71 73
(In line eight) . . .	24s. .	126 00
(In line nine) . . .	65c. .	666 90
(In line ten)	24c. .	161 76
(In line eleven) . . .	27c. .	803 25
(In line twelve)		$3,274 11

BENJ. NEWHALL,
Proctor for Libellants.

And same day came the respondent and filed interrogatories to the libellants, and on motion it is ordered by the Court that George W. Allen answer said interrogatories according to the consent in writing of the respondent, which said interrogatories are as follows:—

(*Interrogatories to Libellants.*)

And now, on this sixth day of August, A. D. 1855, comes the said respondent, Henry L. Newberry, by his proctors, and submits the following interrogatories to the said libellants, and prays the Court for an order compelling the libellants to answer the same on oath, to the best of their several and respective knowledge, information, or belief:—

First. Whether the goods and merchandise mentioned in the libel and complaint, and for the alleged loss of which reparation is claimed in and by said libel, were shipped on the deck of said steamboat with the knowledge and assent of the libellants, or with the knowledge and assent of some one or more of them, who caused said goods and merchandise to be shipped.

Second. Whether it was not customary and usual by the course of dealing and trade between the libellants and the said steamer Fashion, or her master, or her owners, to carry goods and merchandise of like character and quality as those mentioned in the libel as aforesaid, on the deck of the said steamer, the said respondent meaning and intending by the term "on deck," the lower deck of said vessel, and ordinarily termed between decks?

Third. Whether the said goods and merchandise were not insured on deck, and deck rates of premium paid therefor; and whether the libellants' claim for loss was not adjusted and paid by the underwriters on said goods and merchandise?

The said respondent hereby consents that George W. Allen may answer the foregoing interrogatories, hereby waiving the personal answer of the other libellants, if they so elect.

EMMONS & VANDYKE,
Proctors for Respondents.

And afterwards, to wit, on the eighth day of said month of August, A. D. 1855, came George W. Allen, one of these libellants, and filed his answer to the interrogatories propounded to him by the respondent, as follows:—

(*Answer of Geo. W. Allen.*)

Answer of George W. Allen, one of the libellants, to the interrogatories propounded in said cause:—

To the first interrogatory he says, that the goods and merchandise mentioned in the libel in this cause, and for the loss of which reparation is claimed in and by said libel, were not shipped on the deck of said steamboat with the knowledge and assent of the libellants, or

with the knowledge or assent of some one or more of them, except as implied from and according to the general custom of transportation, and stated in the answer to the next interrogatory, and that the libellants, or any one or more of them, did not cause the said goods and merchandise to be so shipped on deck, and had no agreement with the master or owners of said steamboat that the same should be shipped on deck.

To the second interrogatory he says, that it was not customary and usual by the course of dealing and trade between the libellants and the said steamboat Fashion, or her master or owners, to carry goods and merchandise of like character and quality as those mentioned in the libel as aforesaid, on the deck of the said steamboat, meaning thereby the lower deck of the said steamboat, ordinarily called between decks, except in the following manner: that all the goods and merchandise belonging to the libellants were shipped on board the said steamboat at season rates upon a parol contract for the season, which did not specify any particular mode of carriage, and that such goods and merchandise were to be carried according to the duties imposed by law on the master and owners of said steamboat, and the customary mode of transportation by steamboats in the coasting trade along the west side of Lake Michigan, and that so far as this libellant knows or has been informed, all the goods and merchandise ever shipped by the libellants on board of the said steamboat Fashion, have been carried either in the holds of the said steamboat, or on the lower deck, and most usually on the lower deck; and that such goods and merchandise have been so carried according to the customary mode of transportation by steamboats in the costing trade along the west side of Lake Michigan; and that this libellant cannot state the exact particulars of such custom, but that so far as this libellant knows the same, or is informed as to the same, when goods and merchandise are carried by such custom on the main-deck, the shippers have the same rights against the owners of such steamboats as common carriers, or by way of general average contribution for a jettison as if such goods and merchandise were carried in the hold.

To the third interrogatory he says, that the said goods and merchandise mentioned in the said libel were not insured on deck, and deck rates of premium paid therefor, but that the same were insured at the usual rates of premium; and that the said goods and merchandise were insured for only a portion of their value, claimed to be recovered in this suit, and that the libellants' claim for loss on such goods and merchandise, has never been in any wise adjusted between the libellants and the underwriters on such goods and merchandise, and that no part of such claim for loss on such goods and merchandise has ever been paid by the underwriters on such goods and merchandise.

GEO. W. ALLEN.

District of Wisconsin, ss.

George W. Allen, the foregoing respondent, being sworn, says that the foregoing answers subscribed by him are true.

GEO. W. ALLEN.

Subscribed and sworn to before me, this 8th day of August, A. D. 1855.

B. K. MILLER,
Clerk.

And now at this term, this cause being at issue, the following proofs, filed in said cause, were at the hearing read and admitted on the part of the libellants.

(*Proofs filed and admitted by Libellants.*)

Depositions of witnesses, taken on the part of the libellants by consent of parties, before Winfield Smith, Commissioner, at his office, in the city of Milwaukee, on the days named hereinafter, in presence of the counsel for the parties respectively.

(*Deposition of Daniel H. Mead.*)

Daniel H. Mead, being duly sworn, this thirteenth day of September, eighteen hundred and fifty-four, deposes and says: I live at Two Rivers, Wisconsin, and am employed in the tannery of the libellants, the Wisconsin Leather Company. I know about the lot of goods sent down to be shipped on board the steamboat Fashion, about the sixth of June last. This lot was sent from the tannery to the pier about the third of June last. In that lot were forty-three rolls of finished leather, and some sides of leather, and some rough splits, and some bundles or sacks of hair. These were all sent in one lot to the pier, which is about two miles from the tannery. This is the pier from which all the goods from Two Rivers are taken. The hair was of ordinary quality. We frequently put up hair there. It is always in sacks of about the same size. It was, in this case, in sacks of the usual size. The rough split leather was of good ordinary quality. The sole leather was of an average quality. Of the finished leather, there was upper leather, harness leather, slaughter kips, hogskins, band leather. That is all the kinds. There were forty-three rolls of it. I put it up. Of the harness leather there were six sides in a roll, except one roll. The harness leather would weigh on an average about a hundred and twenty-five pounds a roll. The rolls of band leather would weigh about the same. The other rolls would not average any more; they might average less. These comprise the forty-three rolls. The upper leather was of good average quality, and would average about six pounds a side, I should think. The harness leather was of good ordinary quality. The slaughtered kips were a very nice article, of extra quality. The band leather

was a good lot of good ordinary quality. The hogskins were a very good lot, a good quality of skins. They might have averaged about five pounds a skin, to the best of my judgment.

I have come here to testify in this suit, from the tannery here, about a hundred miles. On my return, I will have to go back the same distance. That is now my usual place of residence.

DANIEL H. MEAD.

(*Deposition of Wave W. Moody.*)

Wave W. Moody, being duly sworn, this tenth day of April, eighteen hundred and fifty-five, deposes and says as follows: I was on board the steamboat Fashion at the time of the accident last year. I was second mate at the time (June, 1854). I was at work at the pump part of the time during the progress of the gale. The pump worked well enough until after we got to anchor off Waukegan. There was some water in the hold, which washed the dirt and chips in the fire-hold, and choked up the strainer of the pump. We raised the pump and tried to clear it, and put it back again, when it worked probably fifteen minutes before it choked up again. We cleared it three or four times afterwards, but we could not make it work at all. It would choke up, and was of no effect. We saw there was no use of working it, and we gave up the pump entirely. I could not say what kind of dirt it was. There were chips and dirt off from the wood, ashes and such things. I went down into the hold to clear off the strainer of the pump. No one else was down with me. The second engineer, Richard Savage, was down once or twice before I went down. I cleared it by pricking the holes through with a sliver I had, and by rapping it to shake out the dirt, and when I set it down I raised it a little above the bottom of the hold, to see if it would not remain clear. I was down twice, I believe. I was down the last of any one. The pump, at first, went to the bottom of the hold. I raised it that it stood about four inches above. We worked it, I should think, about fifteen or twenty minutes after it was fixed the last time. After that we got the water out with pails. I think it was about six or seven o'clock in the evening that the pump first began to get foul. I am not certain. We were off Milwaukee in the morning, and were off Waukegan about ten or eleven o'clock. I believe the pump worked well enough until the chain parted along in the afternoon.

Cross-examined by Mr. Van Dyke.

I have been speaking of the bilge pump, a hand pump; there was only one pump on that vessel, to my knowledge; there was, I have understood, an engine pump also, which could not be worked then, because the engine could not be worked; that is called the bilge injection pump; I never saw it. I never saw any occasion for working that pump until then, and then it would not work, because the engine was broken; the condition of this bilge pump was good, I guess,

when we left Two Rivers; it always worked well; the pump itself was in good enough order at the time it would not work, so far as I know, only for the choking with chips and dirt. The water in the hold washed the dirt round on to the pump on account of the vessel's rolling. There was little more water than usual in the hold, and the vessel labored heavily after the chain parted, on account of the heavy deck load we had on, which occasioned the water to wash about the pump; I don't think the dirt could have been prevented from getting to the pump with that amount of water in her. Every time we take in wood, dirt goes into the hold with it, which can't be avoided; it works down between the lining and the outside planking of the vessel: that can be got at by taking up the lining; if the hold was swept every trip, it might be kept cleaner than it was. It is a pretty difficult matter to take out the skin of a vessel; it is generally all spiked down; I don't know when this vessel was last overhauled. The skin of a vessel is never taken up during the season of navigation on these lakes, as I know of; I never knew of such an instance; the fact that this pump ceased to work, had nothing to do with that vessel's going ashore. We kept the vessel clear of water with pails, so that the water did not gain on us any after the pump stopped working; that pump always worked perfectly well before, always when I saw it work—at Chicago and Green Bay, where we always pumped. We did not work that pump before we were off Waukegan, on that same trip, to my knowledge; I don't know whether the pump was tried or not. It was the duty of the officer on the watch to try it; I was off the watch then, I believe I was on deck all the time; it might have been tried without my knowing it; I might not have known it if the pump had been tried and found unserviceable.

WAVE W. MOODY.

(*Deposition of Sanford B. Grant.*)

Sanford B. Grant being duly sworn, this tenth day of April, eighteen hundred and fifty-five, deposes and says as follows: I am a lumber merchant, and acquainted with the value of lumber. My impression is that shingles would weigh from 250 to 300 pounds per thousand, as we generally get them. If dry, they would weigh less; there would not be probably over 25 to 30 pounds less, as ordinarily seasoned; I do not remember to have seen any weighed, and I may be in error 25, 30, or 40 pounds, but I believe my impression is correct. There is a great difference in shingles; those we manufactured here, we were selling on the 25th or about the 20th of June last, at $\$3\frac{1}{2}$ per thousand in quantities. Those were manufactured here and were more valuable than those brought here generally; some we were selling as low as $\$2\frac{50}{100}$ a thousand, but those were of an inferior grade of shingles.

(The foregoing testimony taken subject to objection made by Mr. Van Dyke.)

S. B. GRANT.

(*Deposition of Rufus Allen, Jr.*)

Rufus Allen, Jr., being duly sworn, this tenth day of April, eighteen hundred and fifty-five, deposes and says as follows: I reside in the city of Milwaukee; I am clerk of the Wisconsin Leather Company; I have been acquainted with the value of different kinds of leather for some years past; here nearly three years, and before that in Cazenovia, New York. Some kinds of leather were higher last June in Chicago, than here; I know the value of leather here at that time; I could not swear to the value of leather in Chicago, except what I have heard. The value of upper leather of a good average quality in this city at that time, was from thirty-three to thirty-four dollars a dozen. Harness leather of the ordinary quality was worth twenty-seven cents a pound. Ordinary band leather was worth twenty-six cents a pound. I think Buenos Ayres sole leather was twenty-five or six cents a pound, and Bahia sole leather twenty-two or twenty-three cents a pound. The best slaughter kips were worth five shillings a pound, that is, the "good quality." Hogskins of a very good quality, here would be worth about three dollars and a half a piece. I think we then sold rough splits here at sixteen and a half cents a pound. Somewhere along that time we sold them at eighteen cents a pound; I don't know whether the usual rate at Chicago is higher than here or not. Our firm sells at both places at the same rates. The Turks Island salt sacks, gunny sacks, hold about three to four bushels of hair each. Those sacks of hair we sold at Chicago, at seventy-five cents a sack; we never sold any here. The sacks usually sent by us to Chicago, were of this kind; I presume these were of this kind, but I did not see them.

Cross-examined by Mr. Van Dyke.

I came to Milwaukee about the fifteenth of June, 1852, and have been in the employ of the libellants ever since. I have a salary. I have no interest in the profits. I have not been in any other leather establishment in this city. I have given the prices at which that firm sold in June, 1854. The prices now vary from that a very little. The prices I have given were the market prices in this city. I am sure that nobody sold less. That was the market price given in the papers. This leather would be worth as much sold on board the vessel as sold from the store. There would be only the expense of cartage in bringing the leather from the boat to the store. The prices I have named are the wholesale cash prices of leather sold at the store. I don't know how we sold at Chicago so large quantities as this was. Our rule here was cash or bank notes at ten per cent. interest. We would not then make any deduction on the price of leather, as it was scarce.

Re-examined by Mr. Newhall.

I think I should have known if there had been any sales in this city made at lower rates than those I have named.

R. ALLEN, JR.

(*Deposition of Charles T. Bradley.*)

Charles T. Bradley being duly sworn this thirtieth day of June, eighteen hundred and fifty-five, deposes and says as follows: I am a dealer in boots, shoes, and leather in this city, and have been for the past twelve or thirteen years. I am acquainted with the value of leather in this city on the seventh of June, 1854. Rough split leather of an ordinary quality varied in value from fifteen to eighteen cents. Upper leather of good quality was worth twenty-two shillings a side. Harness leather of a good quality was worth, at that date, from twenty-six to twenty-seven cents. I don't recollect so distinctly about band leather, as I never dealt much in that. It would be likely to be a little higher than harness. An extra quality of slaughter kips was then worth from sixty to sixty-five cents a pound. Bahia sole leather was worth from twenty-four to twenty-six cents a pound. An average quality of Buenos Ayres sole leather would be about the same. The value of leather remained about the same during June and July, 1854. I don't think there was any difference between prices here and in Chicago. I should judge hogskins would be worth from a dollar to ten shillings, but I don't know anything about them. I never dealt in them.

Cross-examined.

These are the prices we were buying at then—the wholesale manufacturer's prices. I was here in June, last year. I recollect a storm we had in the early part of June. I think it came up very suddenly, and was very severe. I have not very distinctly in mind how long it lasted, and what damage it did, but my impression is that it was severe.

Re-examined.

I was not out on the lake during that storm. Nothing occurred that would place it very distinctly in my mind. I have only the ordinary recollection a man on shore would have of it.

C. T. BRADLEY.

District of Wisconsin, ss.

I, Winfield Smith, a commissioner of this Court, do certify that the foregoing depositions were taken before me, at the place and on the days respectively above stated, by consent of counsel, and in their presence; that they were by me reduced to writing, from the

statements of the witnesses taken on oath, before me, then carefully read over to and subscribed by them. Dated this thirtieth day of June, eighteen hundred and fifty-five.

WINFIELD SMITH,
U. S. Com'r District of Wisconsin.

(*Deposition of John R. Howe.*)

August 24th, 1855, before me came B. Newhall on the part of the libellants, and N. J. Emmons on part of respondents.

John Randolph Howe, being duly sworn on the part of the libellants, testified as follows:—

I am a seaman by profession, and have been so for twenty-five years; have followed the lakes for about twenty years, part of the time have been a master of steamboats; have coasted along the west side of Lake Michigan for four years, during which time I have been master of st. boats Champion, Detroit, and Pacific; have been between ports of Chicago and Twin Rivers, and intermediate ports. Know steamboat Fashion, and should think her about three hundred tons burden. A steamboat of her size should have two bilge pumps at least, in addition to the bilge and injection pump. The latter steamboats always have.

The bilge pumps are usually copper pipes, which usually run down near the engine, and are worked by the engine. In some cases hand pumps are used, which are placed in the part of the boat where they are mostly needed. These pumps may be made of other material besides copper. Should not think a boat like the Fashion would be properly equipped with one bilge pump. Should think she would need at least one hand pump besides, and also the bilge injection pump. Have sailed the west coast of Lake Michigan by day and night, in stormy and pleasant weather, at all times and in all weather, when a boat could run. Don't know that I ever had any difficulty in making Milwaukee Bay. It is necessary to keep a better look-out, and more accurate reckoning in thick weather. In thick foggy weather and snowy weather it is necessary to look sharp, and when the fog comes on know where you are, and calculate your time accordingly, to make Milwaukee Bay. A man must not lie round the saloon, and be inattentive to his business, or he will be likely to run by. There is no necessity for a steamboat in navigating the lake from Manitowoc to miss the Milwaukee Harbor, with proper care. In running from Manitowoc to Milwaukee in thick weather it is necessary to know the time of leaving, the speed of the boat, and that she has an even head of steam, and that she runs up to her time, to make Milwaukee Harbor. If an engineer discharges his duty, you can tell the speed of the boat from the number of revolutions. The same is true of making any other harbor on the lake. With sixty fathoms of chain you can anchor a boat in five fathoms. Sometimes we let go an anchor in deeper water. A chain of sixty

fathoms would do good service in fifteen or twenty fathoms. In a gale we should seek more shallow water, because the anchor would hold better.

Along this coast there is better bottom in about five fathoms. There are good anchorages between Milwaukee and Waukegan, both at Oak Creek and Racine.

Question by Mr. Newhall. Supposing a steamboat of three hundred tons, or thereabouts, to have a chain 60 fathoms in length, a big anchor, and that she is out near Milwaukee in a violent gale, and that one of her wheels is in danger of giving out every moment, would it be best to cast anchor in shoal anchorages between Milwaukee and Waukegan, or to go out into water of such depth that her anchorage would not be of much use?

Answer. It would be better to go into shoal water or make a lee, and let go your anchor. For example, at South Point, near Milwaukee, at Oak Creek, or make the harbor at Racine. Or let go your anchor off the light-house at Racine.

Question by Mr. Newhall. Supposing a steamboat of 300 tons, or thereabouts, to be out in a severe gale, and that one wheel is entirely disabled, but that she is sufficiently equipped with pumps, and that she has a cargo of 40 tons, or thereabouts, would it be necessary to make a jettison of the cargo?

Answer. I should think not under such circumstances. 40 tons on a steamboat of that size would not be of any benefit or any disadvantage to her.

Cross-examined by Mr. Emmons.

A vessel does not make the same speed in a gale as in fair weather, and it is something more difficult to tell the rate of speed. A written record of the time a boat makes is not usual on the lakes. When I speak of a reckoning, I do not refer to a log or journal, but to a reckoning for a man to keep in his head.

The west shore of Lake Michigan, in a northeast gale, is not any more dangerous than any other lee-shore. We call it favorable, because there are a good many points under which a vessel can lie at anchor.

I can't tell what I should do if I were on a steamboat in a gale of wind; it would depend upon circumstances. I might alter my opinion if I were on the boat. I only give my opinion according to the circumstances as stated in my direct examination, and even under these circumstances, if I were on board, I might act differently because the thing might look differently. It is difficult to tell what another man should do under the circumstances stated. I only state what I should do myself under the circumstances. I cannot tell what I should do, until I have been placed in the situation stated.

The bilge-pumps of which I speak are pumps to free the vessel from water in the hold. Steamboats are sometimes built without any

other pumps than those connected with the engine, and working by it. I have been in boats that only had one such pump. The Detroit had only one and a hand-pump, and the Pacific had one; but, after I commenced sailing her, a hand-pump was put in, because one pump was not sufficient to free the boat. She dropped forward, and it was necessary to put a pump in to draw off the water, because the water wouldn't run to the engine. The Pacific was four or five years old when the hand-pump was put in her.

Re-examined.

A steamboat of three hundred tons burthen *must* have a bilge injection pump. A boat can't get along without it. It is not absolutely necessary to have the bilge-pump attached to the engine, but it saves labor to attach it. A boat ought to have two pumps, and both may be worked by hand, the one attached to the engine as well as the hand-pump. I don't mean to say a boat must have two pumps, but in my opinion she ought to have two.

J. B. HOWE.

Witness' fees $4 00; paid by Mr. Newhall. Subscribed and sworn to before me, this 24th day of August, 1855.

E. L. BUTTRICK,
U. S. Com'r.

(*Deposition of Thomas Clark.*)

Thomas Clark, sworn on the part of the libellants.

I have sailed steamboats on the lakes nine years. A steamboat of 300 tons, or thereabouts, ought to have three bilge-pumps; one worked by steam and two by hand would answer very well. The one worked by steam should be so arranged that it could be worked by hand. The bilge injection pump is used to fill the boiler, and I do not include that in the class of bilge-pumps.

I have been on the lakes twenty-two years, and eleven years on a steamboat.

THOM'S CLARK.

Witness' fees $1 60; paid by Mr. Newhall. Subscribed and sworn to before me, this 24th day of August, 1855.

E. L. BUTTRICK,
U. S. Com'r.

(*Deposition of Thomas C. James.*)

August 29th, 1855.

The parties again appeared. Present, for libellants, B. Newhall, Esq. For respondent, N. J. Emmons, Esq.

Thomas C. James being called and sworn on the part of the libellants, testified as follows:—

I am a machinist by profession; I am inspector of engines and boilers for the Collection District of Chicago, and have been such inspector since Jan. 1853. I have some of the certificates of inspection and engineers' certificates from 1853 up to 1855, with me.

[Book of certificates produced, and a copy of certificate of steamboat Fashion is called for by respondent, and is hereto annexed, marked "A".] A certificate of inspection was issued to the steamboat Fashion, August 18, 1853, for one year from that date. It does not appear from my books, after an examination made by me, that Richard Savage was licensed as an engineer by me. I have examined all the licenses issued from my district, and I find no license to Richard Savage.

[The above testimony taken subject to objection on the part of respondent.]

Henry L. Newberry has no license from my district as a pilot.

We have, as a general thing, returns from other districts of certificates of license; but, in some instances, the returns have been incomplete. I have had engineers apply to have their licenses renewed, but have been unable to find their names returned.

[The above also taken subject to objection by respondent.]

In the spring of 1854 I discovered one of the flanges of a wheel of the steamboat Fashion loose. I got an engineer for Mr. Newberry at that time, Mr. Adhard by name, and he was the one who pointed it out to me. I am not positive it was in the spring of 1854; it might have been the fall before. When I saw it, I discovered the keys of the flange had been driven from both sides in one key-bed, point to point; and driving one would have a tendency to loosen the other. I spoke to Captain Newberry at that time, and recommended him to have but one key for each bed, in each flange. This would require either the making of new beds or trimming the old ones. The Captain requested me to get some one capable of doing it, and I spoke to Mr. Mason, and told him to send a man down; but the key-beds could not be cut without taking the flanges off altogether, and that was not done, I think, until a new shaft was made. I always looked on the wheel and boat as insecure, and, had I had the power, I should have stopped the boat.

Question by Mr. Newhall. Can the flanges of steamboat wheels be made sufficiently secure, and can the keys be sufficiently well fitted that the wheels will stand any sea without loosening the flanges, and if so, how?—describe the way.

[Objected to by Mr. Emmons.]

Answer. I think they can; the point of a steamboat shaft is smaller than the end the crank is on as a general thing, consequently one flange requires to be a little larger in the eye than the other. I would force the first flange until it comes against a shoulder on the shaft. Then I would drive my key with the point towards the shoulder, so that the butt of the key would be on one side of the flange, and the shoulder on the shaft on the other side, so that the

flange would have to move against the taper of the key on one side, and the shoulder on the shaft on the other side; and the other flange being smaller, would go on the other end in the same way. I take it for granted the keys would be well fitted. There is scarcely anything in the shape of machinery but what is liable to give way, but the proportions are in their favor. There being two flanges, each of equal surface and bearing with the crank, consequently a single flange having only half the work to do of the crank. If the flanges are put on securely as the crank, the crank would be likely to give way, or the shaft twist off, before the flanges would give way. If a flange was cracked either by latent defect or otherwise, it would be likely to loosen the key; and that would be the only cause that would be likely to loosen a well fitted key.

Cross-examined by Mr. Emmons.

In Mechanics, as well as other departments of science, men differ as to the particular mode in which a thing should be done. It is common to see two competent mechanics doing the same thing in different ways. There are several different ways of doing the same thing right. I recollect when some twenty years ago the flanges were fastened to an octagon shaft with oak or hard wood wedges. There was about three-fourths of an inch between the eye of the flange and the shaft. The oak or hard wood wedges were then driven in between the eye and the shaft, and into the point of the wooden wedges were driven iron wedges. The method of putting the flange on a shaft which I have described, I consider the best way.

Any machine, though made as perfect as human skill can make it, is liable to failure, but I never before saw two keys driven point to point in a key-bed.

I issued a certificate to Mr. Petre, dated March 14, 1854, as an Engineer. I have not examined returns from other districts to ascertain whether Richard Savage was a licensed engineer or not. I have come to the conclusion that some districts have failed to make returns, and the returns of other districts have been incomplete, from the fact that application has been made to me by those licensed in other districts to have licenses renewed, and have been unable to find their names returned.

Re-examined.

Question by Mr. Newhall. Did Captain Newberry ever call upon you to approve the construction of any different flanges or keys than the one you first described? or have you ever examined the flanges of the steamboat since the time mentioned in your direct examination? If so, state when and how the keys then appeared.

[Objected to by Mr. Emmons.]

Answer. Capt. Newberry never called upon me for that purpose.

I went on board the boat when they were putting in a new shaft, but I can't tell exactly when. The shaft was rather small, the flange fitted loosely on the shaft. I suggested to Mr. Petre to have the shaft on two keys to divide the shaft into four parts by the circle, and put the two keys within one quarter of the circle, leaving the three quarters without any. I am not positive whether it was done, but at that time they were putting in a forged key, it was not finished. It was well forged, but a key should be finished on a regular taper. A well fitted key is the most important thing, as it is the only thing that holds on the crank or walking beam or flange. A finished key is either chipped and filed, or planed, in addition to being forged. After my attention was called to the flanges of the boat I always had a suspicion of it. I didn't always consider them unsafe, or I would not have given her a certificate.

THOS. C. JAMES.

Witness fees $12 50, paid by Mr. Newhall.

Subscribed and sworn to before me, this 30th day of August, 1855.

E. L. BUTTRICK,
U. S. Commissioner.

("*Exhibit A.*")

Certificate of Inspection of Hulls and Steam Boilers.

STATE OF ILLINOIS,
District of Chicago.

Application having been made in writing to the subscribers, inspectors for said district, to inspect the steamer Fashion, of Detroit, in the State of Michigan, whereof Henry L. Newberry is owner, and Henry L. Newberry is master, we having performed that service, now, on this eighteenth day of August, A. D. 1853, do certify, that she was built at Alconac, in the State of Michigan, in the year 1847, is of 324$\frac{33}{95}$ tons burthen, and is in all respects staunch, sea-worthy, and in good condition for navigation having suitable means for escape from the main to the upper deck in case of accident; that she is provided with twelve state rooms with two berths to each; has no permanent single berths, and no double berths for cabin passengers.

That she has also berths suitable for deck or other class passengers to accommodate persons; can accommodate seventy cabin passengers, and deck or other class passengers. That she is a steamer sailing to or from an American port, a distance of five hundred miles or upwards, and is permitted to carry seventy cabin passengers, and deck or other class passengers. That she is provided with one Marvin low pressure boiler 24 feet long, and 8$\frac{9}{12}$ feet diameter, constructed of iron $\frac{1}{4}$ of an inch in thickness, and made in New York; they are in all respects conformable to law. That each

boiler has been subject to a hydrostatic pressure of fifty pounds to the square inch; that the maximum working power allowed was as determined by the rule prescribed by the act. That there is 1 safety valve with an area $24\frac{8}{100}$ inches, that the load prescribed to each is such as to allow but $37\frac{1}{2}$ pounds pressure per square inch left in charge of the engineer, and now is withdrawn from interference of the officers of the boat, and has 2 supply pipes of $2\frac{7}{8}$ inches in diameter, and has sufficient means to keep the water at all times and under all circumstances up to four inches over the flues. Has 1 steam pipe of 12 inches in diameter each. Has 1 low pressure engine of 36 inches in diameter, and 9 feet stroke. Has 2 forcing pumps of 4 inch plunges, with 52 inches stroke, worked by main engine. Has 4 gauge cocks in the face of boiler. Has 1 water gauge and 1 steam gauge, all properly secured; does not use the alloyed metal which fuses at Fahrenheit. Has 2 forcing pumps of $6\frac{3}{4}$ inches stroke and 4 inches in diameter of plunge, and 160 feet of hose, 20 buckets, and 5 axes. Has 1 life-boat in good order, one additional full supply of oars, 50 life-preservers, steers with a wheel forward, has additional steering apparatus, a tiller to ship aft worked with a tackle. We further certify, that the equipments of the vessel throughout, including pipes, pumps, and other means to keep the water up to the point aforesaid; hoses, boats, life-preservers, and other things, is in conformity with the provisions of law, and that we declare it to be our deliberate conviction, founded upon the inspection we have made, that the vessel may be employed as a steamer upon the waters herein specified, without peril to life from imperfection of form, materials, workmanship, or arrangement of the several parts, or from age or use; and we further certify, that the said vessel is only to run within the following limits, to wit: from Chicago to the Port of Green Bay, on Green Bay, touching the intermediate places, and back.

STATE OF ILLINOIS,
District of Chicago.

Personally appeared before me, the undersigned collector in and for said county, Redmond Prindiville and Thos. C. James, duly appointed inspectors of hulls and steam boilers for the District of Chicago, and made solemn oath that the annexed certificate of inspection is just and true.

REDMOND PRINDIVILLE, [SEAL.]
THOS. C. JAMES. [SEAL.]

Subscribed and sworn before me this eighteenth day of August, A. D. 1853.

WM. B. SNOWHOOK. [SEAL.]

I hereby certify that this is a true copy of the original on file in my office. Eighteenth day of August, 1853.

WM. B. SNOWHOOK,
Collector.

(*Deposition of John Ebbert.*)

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

On this 29th day of August, A. D. 1855, before me, Benjamin K. Miller, Clerk, and *ex-officio* a Commissioner of the District Court of U. S. for the District of Wisconsin, personally appeared at my office in the city of Milwaukee, in said district, John Ebbert and Charles F. Jauriet, witnesses on the part of the libellants in a certain civil cause of admiralty and maritime jurisdiction now depending and undetermined in the District Court of the United States for the District of Wisconsin, wherein Rufus Allen, George W. Allen, Edward P. Allis, William Allen, and Cyrus Whitcomb are libellants against the Steamboat Fashion, her engine, machinery, boats, tackle, apparel, and furniture, Henry L. Newberry, claimant.

And the said John Ebbert, having been by me first cautioned and sworn to testify the whole truth, did thereupon depose and say: I am an engineer by profession, and have been on the lakes for six years. Am now in charge of machine shop, Chicago and Galena Railroad. Have been machinist for the past twenty years. If the flange to a steamboat wheel should be cracked, it would have a tendency to loosen the keys, but it would depend somewhat on the way it was banded. The flanges have been keyed on in different ways; eight-square shafts were keyed on with four keys, six-square shafts with three keys. The keys should be made to fit tight, and to have a perfect surface on the shaft and on the flange. Of late years, the shafts have been made with a boss, which was turned, and the flange bored and keyed with two keys. That was considered perfectly secure. Have known sal ammonia put on the keys to rust them in. The key should be a perfect fit and a perfect finish. If fitted perfectly and well made, the keys would stand any sea.

(*Cross-examined by Mr. Emmons.*)

All machinery is liable to failure. I have seen machinery fail, make it as perfect as you will. I mean by banding the flange, to be banded with wrought-iron bands, one on each end of the hub and on the outer rim of the flange.

JOHN EBBERT.

Taken, subscribed, and sworn to before me this 29th day of August, A. D. 1855.

B. K. MILLER,
Clerk and Com'r.

(*Deposition of Charles F. Jauriet.*)

And the said Charles F. Jauriet, having been by me first cautioned and sworn to testify the whole truth, did thereupon depose and say: I am a steamboat engineer and machinist by profession. Was a steamboat engineer four years, and a machinist about twenty years. Flanges to an eight-square shaft I have seen keyed on with eight keys, and also with four keys. Some with six-square shafts, I have seen them keyed on with six keys, and sometimes with three keys. Keys should be made as perfect a fit as possible, and should have a good bearing on the wheel and a good bearing on the shaft, and drove in well. If fitted so, they can be made to stand any sea for a time, but not forever. It would be hard to tell how long, certainly for a season.

Cross-examined by Mr. Emmons.

All machinery is liable to give way partly in heavy weather, and do not think machinery can be so perfect by human hands as not to be liable to give way.

C. F. JAURIET.

Taken, subscribed, and sworn to before me this 29th day of August, A. D. 1855.

B. K. MILLER,
Clerk and Com'r.

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

I, Benjamin K. Miller, Clerk, and *ex-officio* a Commissioner of the District Court U. S., Wisconsin, do hereby certify that I was attended, on the 29th day of August, A. D. 1855, by Benjamin Newhall, Esq., proctor for the libellants, and by Messrs. Emmons & Van Dyke, proctors for the claimants, and by the said witnesses; and each of the witnesses was by me carefully examined, and cautioned and sworn to testify the whole truth, and the testimony by him given was by me reduced to writing, and thereafter subscribed by the said witnesses in my presence.

B. K. MILLER,
Clerk and Com'r.

(*Deposition of Duncan C. Reed.*)

Duncan C. Reed, sworn in open Court; called by libellants.

I am an engineer; have been an engineer on the lakes from the year 1834 to 1841. If the flange of a steamboat wheel was cracked, its effect would be to loosen the keys. The keys may be fastened by chipping the seats of the flanges; put the flanges on the shaft, then set them with a set of stop-wedges; make wood patterns for

the keys, and number them in their seats; get the keys made, and fit them, and then dip them into sal ammoniac water to take the grease off; then set them all in as hard and long as you can drive them; then take a cold chisel and chip up a burr on the top side of the key, to keep it from going back. We never had one get loose that is put on in that way, unless the flange burst. If the keys were secured as stated, they would not get loose unless the flange burst.

(*Proofs filed and admitted by Respondents.*)

And on the part of respondent, the following proofs, filed in said cause, were at the hearing read and admitted.

(*Deposition of Israel Rand.*)

DISTRICT COURT OF THE UNITED STATES
for the District of Wisconsin.

RUFUS ALLEN, GEORGE W. ALLEN, EDWARD P. ALLIS, WILLIAM ALLEN and CYRUS WHITCOMB,

vs.

THE STEAMBOAT FASHION, her Engine, Machinery, Boats, Tackle, Apparel, Furniture, &c. HENRY A. NEWBERRY, Claimant and Respondent.

In Admiralty.

Deposition of Israel Rand, a witness produced and examined by the respondent before me, Winfield Smith, a Commissioner of this Court, taken by consent at my office in Milwaukee, in said district, on this thirtieth day of August, eighteen hundred and fifty-four. On that day, before me appeared Mr. Emmons, of counsel for the respondent, and Mr. Newhall, of counsel for the libellants, and the said witness, who being by me duly sworn, testified as follows:—

I am a sailor, and have sailed on these lakes since 1838; four years I was not sailing. I know the steamer Fashion; I was mate of her when she went ashore on the eighth day of June last. I am not now mate of her. She then ran between Green Bay and Chicago, and was on her way to Chicago. We had touched at Two Rivers on our way to Chicago. We had aboard between three and four hundred thousand shingles. I could not state exactly, as I have not seen the bills of lading. She has two freight holds; her after-hold was full of them, and she had them amidships, and on the quarter, and in her fire-hold. She had about forty thousand. Her fire-hold besides was filled up with wood. These shingles were taken aboard at Green Bay, and she was in that condition when we arrived at Two Rivers. There we took aboard leather, rolls and sides, and some scraps. There might have been some hair; I forgot whether there was or not. The leather, I have always understood, belonged to and was shipped for the Wisconsin Leather Company. I don't know the individuals of the firm. I don't know the shipper of the leather; he was the

pier man. The rolls of leather we took aboard were stowed alongside of the boiler deck, between decks. The man at the pier turned the leather out to us, and our men carried it aboard. I don't know his name.

Question. Did he know where it was stowed?

[Objected to as irrelevant, and that no ageney has been shown of the libellants.]

Answer. He must have known it. He might have stood there and saw it put on board.

[The libellants' counsel objects to all testimony as to the actions of the pier man.]

The pier man could see while standing on the dock where it was stowed. There was nothing to prevent. We have before carried leather for this Wis. leather company, from there to Chicago and other ports. I don't recollect a trip this season, before we went ashore, that we did not carry leather from there for them. We have carried some for them since. We have always stowed it on deck, that is, between decks. In one or two instances we have stowed some—a ton or two—in the hold.

Question. Was the leather stowed on deck, on these various occasions, with the knowledge of the pier man or person shipping it?

[Objected to.]

Answer. I should think it was.

Question. Did this man have knowledge of your habit of stowing it on deck?

[Objected to.]

Answer. I think he did. We could not have stowed the leather anywhere on the boat at that time (that is, in any place where we deposit freight), unless we had put it on deck; our holds were full. I mean by on deck, on the main deck. Between decks we generally carry, up to this time, full cargoes of shingles from Green Bay.

Question. Where is your custom to stow away freight?

[Objected to.]

Answer. We stow it on our quarter and amidships between decks. We left Two Rivers, the wind from the northeast blowing tolerably fresh, but not so but that we could lie alongside of the pier. We ran over to Manitowoc. I think we took nothing there. I don't recollect of anything going ashore or coming aboard there. The sea began then to roll intolerably heavy; we could not lie at the pier at Manitowoc. We ran out from there, and it came on to blow pretty heavy. I set the watch. It took two men to steer. The second mate and saloon tender (who is a sailor) were at the wheel. I went into the ladies' cabin and turned in, it being cold. The captain had the deck. I was called at ten o'clock in the evening. We left Manitowoc about seven in the evening. I put the two wheelsmen at the wheel, to relieve the second mate and barkeeper. We were then about five miles above Sheboygan, steering south by east. I hauled her up south to keep in with the land, so as to make Milwaukee. It came

on thick, and a drizzly rain or mist. I lost sight of the land; could see no light. At four o'clock in the morning I called Captain Newberry. He hauled her in to the land, about southwest I now think, but I won't be certain. We made the land in probably twenty minutes after he hauled her up. We could see a clay bank a mile long, but we could see no trees or anything else except the bank, owing to the fog; we supposed it to be the land above Milwaukee. We went about, and ran probably twenty minutes, when the captain concluded it must be the land below Milwaukee, north of the North Point, not knowing of any such looking land south of Milwaukee. We stood on a short time, I can't say how long—I think not quite half an hour—when it cleared up, so that we could see where we were. Captain Newberry reckoned then that it was better to go on to Chicago than to beat against that heavy sea to Milwaukee, of which place we were ten miles south. The boat was making tolerably good weather. It was then a heavy gale of wind. A boat going before the sea makes better weather than with the wind abeam or ahead. I then went into the ladies' cabin again, and turned in. I was called at eleven, I should think, to clear away the big anchor. I came out and cleared it away, and let it go. I should think, by the scope of chain, that there was about thirty-five fathoms of water there when we were going to let go the anchor. I inquired of the engineer what the trouble was. He told me that one wheel was gone. We all, the engineer, second mate, and myself, then went to work to clear away the wheel, to get rid of it altogether, and found it was impossible; it was loose in the flanges, and went round, so that a man could not work in the wheel. I lashed it. It was the sea, not the engine, that caused the wheel to go round while we were at work there, it being detached from the shaft. I lashed it the best I could, to keep it from smashing against our wheel-house. She labored pretty heavy at this time, and was riding very heavy at her anchor. They were heaving off her deck load of shingles while we were at work at the wheel. After we hove the shingles off, she lay tolerably easy, considering the place she was in. I can't state exactly the time, but I should think between two or three o'clock in the afternoon, she parted her chain. I saw no time; it might have been four. She came round into the troughs of the sea, and lay there probably half an hour before we could get the steam on her again. Something was out of *kilter;* I dont't now remember exactly what. The engineer was at work at her. The sea was making a clean breach right through her gangway. We threw over part of our leather, to lighten her. We got steam on her again, but could not turn her. She was in the troughs of the sea, first on one tack, and then on the other. The engine broke down, and she lay rolling, first one guard under and then the other, and it blowing heavy a gale of wind, we let go the small anchor, not thinking to hold her, but to keep her head to the sea more. This we did by the way, when her engine broke down. We discovered that her pumps could not keep her free. We hove over the rest of our leather. We, passengers and crew,

commenced bailing, and breaking shingles out of the after hold. We took out some fifteen or twenty thousand shingles out of the after hold. We found it necessary to let that alone, and put all hands to bailing, as the water was gaining on her very fast. We bailed her till about two o'clock in the morning. We were then so near the beach, that I told them they might knock off; they were then all tired out. Soon after we stopped bailing, she struck a bar some fifty or sixty rods from the shore. She first struck light, but afterwards struck several times pretty hard. She went over it, and a short time after went on to the beach, about four miles and a half below Chicago (north of that place). She *listed* out to seaward, and the sea made a clean breach over her forward, smashing in her store-room, cook-house, and all her state-rooms on her larboard side. She filled with water immediately after she struck. I considered that it blew a perfect tornado. It was the heaviest blow I ever knew at that season of the year.

We threw over the cargo to save life. We thought if we could save the boat we could save ourselves. It was thought necessary by the officers to throw it overboard.

Cross-examined.

I think it was the 25th day of March last I shipped on the Fashion. I had nothing to do with her before then, or since she went ashore; what I say about shipments refers only to the time I was aboard. She was three hundred and some odd tons. We left Green Bay for Chicago and the intermediate ports, including Milwaukee.

We had six or seven deck hands on her from the Bay upon that trip. Six was her crew. I only knew the name of one of them. His name is Joseph Harris, I believe. There were besides, the first mate, second mate, two wheelsmen, two firemen, two engineers (first and second engineers). The second mate's name was Moody. The first engineer's name was Francis Petrel, I believe. I don't know the name of the second. They were all aboard on that voyage. There were probably twenty or thirty passengers aboard. The lumber was all shingles, one-half of the shingles were on deck, I should think. We had three holds. The forward hold was full. I had the hold stowed, and examined them. I could not say whether the man who turned out the leather turned out other goods also. I don't know whether he owns the pier, or what his business is. I have often seen him before, but don't know him. The side leather was on the forward hatch. The rest was about midships, by the side of the boiler deck dunnaged up. The roll leather was principally upper and finished leather. There was a large number of rolls of different weight and sizes. We had no trouble before leaving Manitowoc. No difficulty near Manitowoc. We did not go into Sheboygan. We went within three miles of it. It was dark and we saw the lights,

but we saw no vessels in there, we could not see whether vessels were there or not. I could see the lights when I came on deck at ten o'clock, we were probably five miles from there. I had charge of her deck then. It was my watch from ten o'clock. The two wheelsmen were at the wheel. The captain was often with me. I could not say how long it was before we arrived off Milwaukee. I and the two wheelsmen were on the deck until the captain was called at four o'clock. The captain had then been below about an hour. We began to get the gale about the heaviest about eleven or twelve o'clock. When we were off Sheboygan there was quite a heavy sea. So when we were at Manitowoc there was a heavy sea, and a gale evidently coming on. About the time I called the captain a steamboat passed 3 or 4 miles to the eastward. It was clear the eastward. The captain thought we were north of Milwaukee, after he was called. The vessel might have gone four miles from the time I called the captain until we discovered that we were off Oak Creek, ten miles south of here. She was then going well, and making good headway, considering the heavy sea. We sustained no damage up to that time. I should think it was about four o'clock when we called the captain. There had been no reason before that why I deemed it necessary to call the captain, or have more hands on deck. It was so dark that I did not want to make the land before. I steered her to lay her along the land as near as I could. It was dark, and she steered very badly. I was afraid of getting her into the troughs of the sea. The engine was not working very powerfully. I supposed we were north of Milwaukee, because I had seen no lights, and I knew I had kept near enough to the shore to see them. The fog did not show up till morning. If I had not considered we were north of Milwaukee, I should have tried the shore before. I could not say how fast we were going before I called the captain, probably eight or nine miles an hour. The first engineer was then on watch. I think we might have been five miles from shore, when we first came in to ascertain where we were. I think it was about ten o'clock when I was called up to let go the anchor. It was a good chain cable, about sixty fathoms long. There was about seven fathoms of chain in board before it touched the water. There was no rope about the cable. The water was too deep to lie at her anchor. The heavy sea and heavy wind after her made her steer badly. There were chains to her rudder, and ropes on the barrel of the wheel in the pilot-house, and chains from there aft. We cast over all the shingles on deck, and some of the leather, before the chain gave way. We did not measure the water. I suppose there was about thirty-five fathoms, perhaps more or less. The chain was pretty straight, and she labored heavily. When I was called up to clear away the anchor, she was in the trough of the sea, and had no headway on her. We might have been then seven miles from shore. We tried to cut away the wheel, but could not. I lashed it with a rope and it soon got loose. Then the engine broke down, and I did not try to lash it

again. We could not cut away the wheel, for we could not work in there on account of the motion. She lay at anchor probably three or four hours before the chain parted. About half an hour after that we got our engine working again. I don't know what was the trouble in the engine-room. The engineers were at work there. There was low steam on her all the time. I lashed the disabled wheel while at anchor, an hour after we anchored. I don't know when the wheel got loose again. The first I discovered it was when we went ashore. When the engine broke down I paid no more attention to it. It must have remained lashed until the engine gave way. It might have been 4 or 5 hours after we anchored, when the engine broke down. I lashed the wheel as follows: I got a line round one of the arms and lashed it to the arch, and then I got a line on the same arm to the arch forward, and hauled the lines as taut as I could. I found difficulty in keeping the boat in right trim. This first happened after the accident, when she was in the trough of the sea. There were four sand barrels on board; one of them went overboard, the others we did not throw over, but kept to trim her with. We took the shingles out of the after hatch to throw them overboard. We could not get at the fore hatch on account of the water. We threw over out of the after hatch probably fifteen or twenty thousand shingles. This was in the forepart of the evening. We had then cleared the deck. If we could have got at them I would have thrown over everything we had. We threw over the side leather, all except the rolls, first. Also, the hair, if there was any, and scraps. We threw those over for the safety of the passengers and crew, and preserve the vessel and rest of her cargo. Soon after that we threw over the rest of the leather, several hours before we struck the shore. We threw over that for the same reason as the other. Throwing over the cargo eased the vessel. The shingles we threw over were thrown over soon after the leather was thrown over, and some hours before we struck the shore. After we went ashore, the shingles remaining in her hold were sent to Chicago. A boat came down from there. There were about forty thousand shingles in the fore-hold, which belonged to a man in Waukegan, whose name I don't know, that were saved. There were about eighty thousand in the other two holds saved, which I think belonged to Gray, at Green Bay. They were taken off by the steam tug from Chicago. Those were all saved. I don't know the value of those.

Re-examined.

After the wreck, I went to the Marine Hospital at Chicago. I was ill. I don't know where the second mate is. I could not say how long the vessel lay on the beach; as much as three weeks, any way. I stayed ten days in the hospital, when I went out to a boarding-place and got another doctor.

[The foregoing testimony taken subject to objection on the part of the libellants.]

I don't think we could have gone into Sheboygan that night, when we were off there, with safety, the night being dark and the sea so heavy. I don't think it would have been prudent to have tried to make Milwaukee harbor before daylight even if we had known where we were. We should have had to be off and on, and that would have been a bad job. I think I should have run to Chicago any way, even if I could have seen the harbor. In daylight, I think I should have as soon tried Milwaukee as Chicago, if we were off Milwaukee. We lashed the wheel so as to keep it still, and not with any idea of making it of any service. At one time during the blow she did not have on a very heavy head of steam, as I have stated; the reason was the heavy weather. In heavy weather steamboats cannot safely carry so much steam as in smooth water. I don't mean to be understood that her steam was down, but only that it was not put on to her, on account of the heavy weather. We could not judge accurately that night of the way we were making. The night was dark and the sea was heavy, and the weather was thick, and we could not judge accurately of her speed. A vessel with a stern sea steers badly because her stern will be occasionally lifted out of the water, so that her rudder will not hold, then the wind will blow her stern around first one way and then the other, like a vane on a steeple.

Cross-examined.

I am not an engineer. The middle flange on the shaft was uninjured. The inside and outside ones were both disabled, when I was called on deck. They had not then tried to cut away the wheel. We were probably less than half an hour throwing shingles out of the after-hold. There only two men, I think, at work at taking them out besides me, perhaps three. The rest were bailing, as also the passengers, or many of them.

Re-examined.

The passengers worked hard; they took hold manfully. I remained aboard the Fashion and now am aboard; but I am not acting as an officer, and have not been since she went ashore, on account of ill health. There were a steward and head waiter, porter and second porter, deck sweep, second waiter, cook and second cook, and two other waiters in the cabin, on board at the time she went ashore.

Cross-examined.

What I meant by the term Shipper, as I used it above, is the man on the pier, who gave us the leather. The steamboat we saw was bound north.

ISRAEL RAND.

(*Deposition of F. C. Petrie.*)

Depositions of witnesses taken by consent in this cause on the part of the respondent on this sixth day of September, eighteen hundred and fifty-four. Present, the same counsel as at the taking of the foregoing deposition.

Franklin C. Petrie, being duly sworn, says:—

I am, and was on the eighth of June last (the time of the accident), engineer of the steamboat Fashion. I was asleep at the time we left Manitowoc. I took charge about daylight on the day of the accident. We were then, I should think, about 15 or 20 miles north of this place. The second engineer had been in charge. It was then blowing pretty stiff. It was blowing pretty hard when I went to bed. Near one o'clock A. M. when I came on deck, it was blowing rather severely. The noise awoke me before my time for getting up, which was after breakfast, and I got up. I went round to see if things were all right, and heard a noise in the wheel. I went to it and I saw it had moved on the shaft. I watched it until we got as far as this place. I thought it was getting worse and went in and fixed it as well as could be done at that time. It then went very well until we were, I should judge, about east of Waukegan, 5 or 6 miles from shore, then the wheel gave out entirely.

I concluded that if we could get the wheel stationary, or cut out, we could run with one wheel, so the steward and myself went into the wheel with wrenches and unscrewed portion of it; we could not succeed to my satisfaction, and we had the wheel lashed so that it would not turn with the shaft. In the mean time, the anchor had been lowered, and when we had finished we were at anchor. This was, I should judge, about 9 o'clock in the morning, and we lay at anchor all day until about five o'clock in the evening, I should judge. I kept a small quantity of steam all day for a case of emergency. At about half-past four I lay down in the cabin and went to sleep. At five they called me and told me the anchor-chain was broken. I got up steam as soon as it could be done, and commenced working the engine. The sea was running so high, and the wind blowing so strong, that with one wheel we could not keep her before the wind. The boat was then tossing about pretty badly, making some water. We went on as far as we could. I can't state how far—with our load. After we had been under way awhile it was thought advisable in order to live, to have the boat live, and to save the lives of the passengers, to throw the deck load overboard. While this was being done, one or the other of the engineers had to be in the engine-room to watch the machinery and work her. The reason for this precaution was, that we thought that, with the sea running so high, and the boat rolling around so, there was danger of breaking the other wheel or other parts of the machinery. I think we worked along until about one o'clock in the morning, when the other wheel gave out, and also other

parts of the machinery. There was then nothing to do, as far as work was concerned, but to go ashore.

I forgot to state one thing about the deck load: the rolling of the boat displaced it in such a way that the machinery was in danger of being injured by being entangled in it. The crew repacked it, but could not get it to stay on account of the rolling. The load was shingles, leather, and bags of glue material, I think. This breaking of the freight commenced shortly after the chain parted.

That is as far as I know about it until we struck the beach, between two and three o'clock in the morning. She went on stern first, when she struck the outer bar, or before they let go the small anchor. She made some water, considerable. They used pails to bail her out —the passengers and crew worked at bailing. She filled as full as she could, soon after she went ashore. Part of the passengers left at or after daylight in the morning. Some stayed longer. There were portions of the crew there from the time she went ashore, until they got her off. I can't tell her tonnage. Her engine was low pressure, of three hundred horse power. It was a good one, old fashioned, of the old style of build; they used at that time to put in more iron and make engines heavier than now, not quite so perfect a make.

They improve in engines as in other machinery. The sea made a breach over her lower deck partly, after she went ashore. After the wheel had given out and the chain had parted, it was considered by the crew and passengers and the officers of the boat, that there was danger of her going down and being lost.

Cross-examined

The name of the second engineer was Richard Savage. When I first took charge I supposed we were 15 or 20 miles north of this place. I could not tell exactly where we were. It was last Thanksgiving day that I first went on the boat. At one o'clock the storm was not so hard as afterwards. It kept increasing until we went ashore. It blew harder after the injury of the wheel. My attention was first brought to the wheel by hearing a noise in the wheel as if something was broken. It must have been north of this place that I saw the accident to the wheel. We might have been half an hour or an hour's run north of the city when I first knew it. I did not see the city when we passed it. I saw land. It was more than half an hour—it might have been an hour after I heard the noise in the wheel when we got off the city. We were, I should judge, opposite or south of the city when we stopped to repair the wheel. I can't tell when we were off the city. The wheel broke about 9 o'clock, when we were off Waukegan. When about ten miles south of the city we saw a steamboat and a propeller. I judge by the looks of the land we were about ten miles south of the city. When I first heard the noise in the wheel, I went into it and drove the keys on the flanges. There were four keys that needed driving. There were two in the out

board flange, and two in the inner. They were not out, but so loose that in that heavy seaway the wheel would move. The noise I heard was caused by the buckets rubbing against the side of the boat. This was caused by the moving of the wheel on the shaft, which was affected in some degree by the looseness of the keys. When I first heard the noise I had my suspicion as to the cause of it, from the sound. It might have been fifteen minutes after I got up when I heard the noise. We then both remained on deck. I had then been in bed since one o'clock. I do not know whether this noise had occurred before I perceived it. We drove the keys with a sledge; the sledge weighed, I should judge, not less than ten and possibly fourteen pounds. I was in the wheel perhaps 15 minutes. The noise then ceased for awhile. It commenced again and then it would stop. We did not drive the keys again. We could not take any other means to prevent the difficulty. It must have been earlier when we drove the keys, for about 9 o'clock the flange gave out entirely. It was about daylight when I got up, we could not see any sun. I could not tell how long after I got up, when we saw the two boats. It must have been more than two hours. These same four keys in the flanges came out entirely. I did not see them when they came out. I had examined them after I first fixed them. I went round continually from one part of the engine to the other, and I examined the wheels at intervals of sometimes five, sometimes ten, and fifteen minutes. I was on deck and saw the keys in. I went below, and when I came up the wheel was entirely disabled. I had examined them, but had not done anything since I first drove them. When I drove them, I had told the captain I was going to stop the engine to drive the keys, and I did so. I think we were then nearly opposite this place. I think it was more than half an hour after I first got up. I first supposed, on hearing the noise, that some of the buckets were loose, not that the keys were out. Since that engine was put in, improvements have been made in the air-pump, and in the cut-off in engines, also in the valves, as some think. They have some better looking and some better working engines nowadays. The greatest improvement is in the cut-off, which is a part of the machinery to regulate the quantity of steam. There are other small improvements also. The Fashion is about six years old. Her bell is marked July 4, 1847. I saw part of her cargo thrown overboard, and some go overboard of its own accord. The leather was last thrown overboard. I can't say that any of the leather was washed overboard. Some of the sacks were. It must have been between 9 and 10 o'clock when we anchored. The wheel then gave out entirely. The shaft turned inside of the wheel. We commenced working it as soon as it gave out. We cut out parts of it, and about 11 or 12 o'clock we got it lashed. We worked the engine at times by hand to see if it would work without lashing the wheel. We found it would, but not well; there was danger of breaking the shaft and other parts of the machinery by working the en-

gine without lashing the wheel. I don't know how deep the water was there.

The crew were pumping most of the time we were lying at anchor. They took turns at the pumps. It was about five o'clock when the chain broke, and the engine finally gave out between one and two o'clock in the morning. We were then going partly away from the shore. While lying at anchor we kept a small quantity of steam on. We did not work the engine, except by hand, as I stated. The storm kept increasing. The engine worked well; as well as a boat with one wheel will work in a heavy seaway. When we went ashore the wheel was still lashed. It was the starboard wheel. I don't know much about the steering of the boat at that time. I think it did not then very well, on account of having only one wheel. I did not have any occasion to go into the hold, except the fire-hold. I believe they were filled with shingles. There was some wood in the fire-hold. The engine finally gave out on account of the heavy sea and the rolling of the boat. At times the wheel would be out of water, then the engine would work very fast, so that we could not shut the steam off or stop it in time, and when the sea struck it again it would jar very heavy, and finally the wheel gave way entirely. The engine was not injured by the cargo, though I feared it would be, and it was repacked to prevent it. There was a wheel-house round the wheel. I could not state when they commenced bailing, but it was after the engine gave out entirely. We have for pumping out the boat a bilge pump, which can be worked by hand or by attaching it to the engine. There was only one. There is also what we call a bilge injection. That can hardly be called a pump, and yet it may be used as a pump. It serves two purposes. It serves for throwing cold water into the conductor, and also for pumping water out of the boat. We had no other bilge pumps. We had also double acting forcing pumps—fire pumps. We have one forward, one at the engine, and another hose to attach to the engine. Those are to take water out of the lake in case of fire. The leather was not, I think, thrown over until after the engine finally stopped; but I don't know what time the freight was thrown over. Our engine doors were shut to keep out the water. I only saw part of it thrown over. It was thrown over to preserve everything. In preserving the vessel, it preserved the lives of passengers and crew. It was repacked to prevent injuring the machinery. I wished it thrown over or got out of the way, as far as I was concerned, so as to be out of the way of the machinery. It was not thrown over at my request. It might have been one reason, among others, that it was thrown over to keep it out of the way of the machinery. The boat was towed into Chicago by the iron steamer Michigan, on Sunday, about three weeks after it went ashore. It is a passenger steamboat. There might have been twenty or more passengers on board. The boat belongs in Detroit, and is called the Fashion, of Detroit.

Re-examined.

I judge of the time when we were off the city by the time we were running from there to this point south of the city that I have spoken of. That is the only means I have of judging when we were off the city. I did not see the City of Milwaukee. The weather was thick and hazy. We could see land, but not distinctly. We could see that it was land, but not what was on it. I don't remember whether it was raining. I never was out in so severe a storm as that in my life. I never knew of a more severe storm.

Question. Is there any possible way of securing the flanges on the wheel, after you discovered they were loose, than by driving up the keys in the way you did?

[Objected to by libellants' counsel as being informal.]

Answer. There was no other possible way. The flanges are usually secured to the shaft; always, in fact, by keys, as this was. Some shafts are turned round and some are left eight-sided, and the flanges where the shaft is turned are bored to fit the shaft, and where that is eight-sided the flanges are cast to fit the shaft as nearly as can be. We have had the keys loose several times before.

Question. Is it a thing of frequent occurrence in a heavy sea? Is it not more likely to happen in a stern or quartering sea than at other times when she is running head to the wind?

[Objected to by the libellants' counsel as informal.]

Answer. It is a thing liable to occur at all times, more particularly when the boat is rolling, and a boat will roll more with a beam sea or quartering sea than with a head sea.

Cross-examined.

The wheel has been repaired. The same engine is in, not the same wheel. The keys are merely flat pieces of iron, thinner at one end than at the other, fitted to the shape of the key way cut to receive it. I never kept any account of how often they had been loose. It might have been twenty times and it might not. I don't know how often. I believe the first mate, Rand, is called a pilot, but I don't know. I don't know much about sailors' business. I first went as sailing engineer on the Fashion.

Re-examined.

That was my first engineering with a low-pressure engine. I have had to do with engines, and been acquainted with working of steam since I was sixteen years old, and have been employed and at work on engines since then.

Cross-examined.

I mean when I say I been acquainted with engines, that I have

been acquainted with them in the workshop and by reading. I am twenty-three years old. I have my certificate as an engineer.

Re-examined.

That certificate was issued at Chicago. The old flanges have been put in again, except one which was cracked. I did not see the crack until we got ashore. It was in such a way that we could not see it until we took the wheel to pieces. There were no other pumps at that time to free the vessel of water than those I have mentioned.

Cross-examined.

Since then we have attached a pipe to the forward fire-pump, so that we can pump water out of the lake or out of the boat, as we desire; that is to help the other pump. When at anchor, we were off Waukegan, I should judge. When I got up, at daylight, I think we were fifteen or twenty miles north of Milwaukee. I think we could run from that point to Waukegan by 9 o'clock, for the reason that we had a heavy wind after us. I looked into the wheel to see what was the matter when I heard the noise, and I found what was the matter. I deemed the key-ways sufficient to hold. They were arranged under my superintendence.

Re-examined.

The Fashion, when loaded, generally makes ten miles an hour, or about that.

Cross-examined.

Our engine worked well while we were at anchor, in every respect beside the injury to the wheel.

F. C. PETRIE,
Engineer.

(*Deposition of Peter Nelson.*)

Peter Nelson being duly sworn, says: I was on board of the Fashion on the 8th of June last, when she went ashore. I have followed the water for a living, but am not now a sailor by profession. It was about 6 o'clock when they left Twin Rivers. I took the wheel on the boat with the second mate six or eight miles this side of Manitowoc. It was a pretty blustering night; it was thick and hazy. I remained at the wheel till we got about five miles this side of Sheboygan, two and a half or three hours. I then lay down in the pilot house an hour, and then went down into the ladies' cabin and lay down on a sofa. I went on deck in the morning. Shortly after we met the steamboats south of Milwaukee. I was then told that we had turned round, and had headed north to make Milwaukee, but when I came on deck we were heading south.

[Objected to by libellants' counsel as incompetent.]

Question. Did they tell you at the same time, why they put about again?

[Objected to by libellants' counsel.]

Answer. They were afraid their wheel would not stand after they found the flange was loose. This was, I should judge, between 5 and 6 o'clock in the morning; I can't say exactly. Shortly after I came on deck, I went to the wheel; we were then about abreast of Oak Creek, ten miles south of Milwaukee. I think it was Oak Creek, because we could see the land, and so they told me. We kept the land aboard from that till we got to Racine, and after we passed Racine reef about 250 rods from the boat. The reef lies two miles east of Racine. After we left Racine we gave the land more of a berth. It was thickening up more, and blew fresher. I was not at the wheel all this time. When we passed Racine I was at the wheel, but not after. They were in continual fear of the paddle-wheel giving out. When the wheel gave out, the order was passed to throw overboard the deck load to light her. I judged we all thought we were abreast of Waukegan. At the same time the order was passed to clear away the big anchor, which I helped do myself. We threw overboard all the shingles between decks except on her quarters. No leather was thrown over at that time. The anchor was let go, and the chain paid out till the anchor touched bottom. The anchor was not let go for the purpose of holding her in that sea, but merely to keep her head to the sea. The anchor appeared to get hold and hold her some, and the captain thought it advisable to pay out more chain and let her hang. We paid out all the big chain we had—about sixty fathoms. She appeared to lay very quiet, and rode the sea very well at that time, and all hands went to pumping—all except some few who were lashing the wheel during that time. We lay there till about 4 o'clock in the afternoon, when the steamboat Traveller came along and hailed us; she was bound to Chicago. Her captain asked us if he could render us any assistance. Our captain thought he could not, and her captain thought the same. The sea was running so high he could do nothing. The captain of the Traveller said he would report us as soon as he got to Chicago, and would send us all the assistance he could. A vessel came along shortly afterwards, and hailed us, but could render us no assistance. We lay in that condition until about 6 o'clock, when our chain parted, and Captain Newberry ordered steam on as soon as they could get it. They had steam on in about fifteen minutes. During this time we were drifting with her head in shore. We got steam on and worked her engine, and got her round with her head out. We had to list her over to windward to keep that wheel in the water, having only one. I should think we ran about two hours and a half with that one wheel when it gave out. The engine gave out, when the word was passed to throw everything over. We threw everything over that we could get at, and two

trimming barrels went overboard. After the engine gave out she made water pretty fast. She was listed down to windward, and the sea was making a clean breach over her guards forward and aft. During this time I threw over some of the leather forward, and then went aft. The second mate and I were on her larboard quarter heaving over freight. The sea would come in over there two feet above the rail. All hands—passengers and everybody else—were throwing freight overboard. After the freight was over, there was considerable water in her. The steward and I deemed it advisable to cut a hole in the lower cabin and go to bailing. I don't know as we had any order to do it. I got the axe, and he cut the hole. We passed the buckets along, and all hands went to bailing except the few who were passing freight out of the after-hold. After the freight was over, the captain ordered the small anchor to be let go. We paid out chain enough that she might just drag along and not fetch up; that was done in order to keep her, as much as possible, head to the sea. They threw the freight out of the hold until the water that they threw on deck splashed down into the hold, and they would not stay there any longer. We bailed until we found we gained on her about three inches. Every one, passengers and all, took his turn at bailing. They bailed till they were all tired out, and then rested themselves. She went ashore soon afterwards.

Cross-examination.

It was the sound of the wheel that made them fearful that it would give out. After I went on deck I heard a sound as if the buckets were rubbing against the side of the boat. The flanges were loose, and I was told the engineers had keyed them up. I mean I was told the flanges had been loose. I should judge we were about two and a half or three miles from Sheboygan, when we passed it, outside of the reef. At Oak Creek we were about five or six miles from the land. I suppose we came about two miles from Racine Point. Up to that time we had kept about the same distance from the land. When the wheel gave out, off Waukegan, I supposed we were seven or eight miles from land. We could see the loom of the land, but nothing distinctly on it. It was about 6 o'clock, I think, when the chain broke—not yet dark. We should have lived through it, no doubt, if the cable had held. It did good service. I don't know the exact time we went ashore—in the morning—about 3 o'clock, I should think.

I should judge the engine gave way about 10 o'clock—it might have been earlier or later. She was doing very well until the first accident to the wheel. I trace everything to that. I have been on board the Fashion since the 16th February, 1853. I have sailed since about 1847. My duty on the Fashion was at first wheelsman—at the time of the accident and since June, 1853, I tended the saloon. I was only a hand on the boat to June, 1853. My age is twenty-

four. I don't know which engineer had charge when I first got up. Both were on deck. I am not certain of the time to the minute—nor in fact to the hour—it is a guess as to the time. I noticed the leather on board. There were some bundles, some rolls, and some loose hides. The rolls were about of a size, and weighed about one hundred and sixty pounds. The after-holds were full of shingles. In the forward hold were shingles, but I don't know how many. We took out about one-third of the shingles from one of the after-holds, and about one quarter out of the other. I could not tell how many shingles there were. The chain was pretty taut as we lay at anchor. If there had been less water, we might have held or not, according to the holding ground.

I would say that, before I took the wheel, I was asked to take it, by the second mate, because the wheelsmen were tired out. Neither of those wheelsmen are now on board. I don't know what has become of them. When I took the wheel she was broached to, laboring heavily. The sea was not so bad for a time after we anchored, but about the time the Traveller came along it increased and continued increasing until we went ashore. It blew about the same from the time we were off Oak Creek, until we anchored. Soon after that it increased. She lay very well at anchor after the anchor had fetched her up.

Re-examined.

I sailed on her all last season, and all this season up to this time. We took leather from Twin Rivers about every trip. We had more or less about every trip.

Question. Where had it been stowed?

[Objected to by libellants' counsel.]

Answer. On deck—on the main deck.

I don't know who owns the pier at Twin Rivers, but I believe Mr. Noyes is the man who tends the pier, and delivers the leather on board. That must have been with his knowledge, for he has been aboard when it was stowed, and has seen it stowed. I never saw a side of leather, or a roll of leather that went into the hold.

[The foregoing all taken subject to objection by the libellants' counsel.]

The way freight between Green Bay and Chicago has been generally stowed on deck, where they have not had a great deal of it.

[The last testimony taken also subject to objection.]

If our holds were full, we put it on deck.

Cross-examined.

Mr. Noyes has a warehouse on the pier, and does all the business on the pier. He receives and delivers everything. All the boats stop there. So far as I know, he receives everything from all

vessels. He has upon the pier to be taken, whatever is to be taken away.

PETER NELSON.

(*Deposition of Charles Cavally.*)

Charles Cavally being duly sworn, says: I belong aboard of the steamboat Fashion, and have been aboard of her since the 23d day of March, 1853. I know of their taking leather aboard nearly every trip last season, and also this season. Last fall, after we had quit running to the Bay, we ran to Two Rivers. We had freight for the Wisconsin Leather Company every trip up and down. We have taken leather for them from there, for this place, and some also for Chicago. It has been stowed on deck, on the quarter and midships. It has always been stowed on deck. I don't recollect ever seeing any stowed in the hold. It was stowed on her quarters on both sides of the ladies' cabin, and amidships, both forward and aft of her shaft.

[The foregoing testimony is taken subject to objection from libellants' counsel.]

I know Mr. Allen, one of the Wisconsin Leather Company, whom I have frequently seen in the store at Milwaukee; I don't know his first name. I know by his talk, and I have understood that he was a member of that Leather Company. I presume that he knew that the leather was stowed on deck, for he has frequently travelled with us up and down, and seen the leather put aboard at Two Rivers, and seen it stowed on deck. He went up and down two or three times last season. I don't remember to have seen him this season on the boat.

Mr. Dousman's man and I were standing talking together on the pier at Milwaukee in the warehouse since this suit was commenced, when this Mr. Allen up and asked me if we were all right again. I told him we were fitted out better than ever before, and asked him to come aboard and see us.

[The foregoing objected to by libellants' counsel.]

I was never present at a conversation between Mr. Allen and Mr. Dousman.

CHARLES CAVALLI.

District of Wisconsin, ss.

I, Winfield Smith, a Commissioner of this Court, do certify that the foregoing depositions were taken before me at the place and on the days respectively above stated by consent of Counsel, and in their presence, that they were by me reduced to writing, from the statements of the witnesses taken on oath before me, and then carefully read over to and subscribed by them.

Dated this thirteenth day of June, eighteen hundred and fifty-five.

WINFIELD SMITH,
U. S. Commissioner, Dist. of Wisconsin.

(*Deposition of John W. Webster.*)

DISTRICT COURT OF THE UNITED STATES
for the District of Wisconsin.

THE STEAMBOAT FASHION, her engine, machinery, boats, tackle, apparel, and furniture, HENRY L. NEWBERRY, Claimant and Respondent,

ads.

RUFUS ALLEN, GEORGE W. ALLEN, WILLIAM ALLEN, JR., and CYRUS WHITCOMB, Libellants.

August 25th, 1855, before me came N. J. Emmons, Esq., on the part of the respondent, and Benj. Newhall on the part of the libellants in the above entitled cause.

John W. Webster being produced and sworn on the part of the respondent, testified as follows:—

I am a seaman, and have been forty-three years; have been master of steamboats and propellers; I know the steamboat Fashion, owned by Mr. Newberry; I knew her when she was built, and have known her ever since; I have been up and down the Lake on her a great many times, when I was in the revenue service, as often as once in two weeks; have been out in her in some pretty heavy blows; once from Erie to Buffalo when it blew very hard.

Questioned by Mr. Emmons. What do you know about her qualities as a sea-boat and as a sea-worthy craft?

[Objected to by Mr. Newhall for libellants.]

Answer. I always considered her a good boat, sufficient to ride out any sea I have seen on the Lakes; on Lake Erie she was always considered a favorite boat, and passengers used to wait for her; I have seen her every season since she came out; I knew her well last season, that is, I saw her in Chicago last season; I went aboard of her twice; I passed her once or twice last season on the Lakes. My opinion as to her qualities extends to last season; I saw her on the beach near Chicago last season; I looked at her through a spy-glass as I was passing up the Lake on the propeller Niagara; I was then bound for Chicago; I remember a storm that occurred the 7th and 8th of June, 1854; we were on Lake Erie in that storm coming up; it blew very hard there; I don't know how it extended up here, but down there it blew hard; it was on the same trip that we saw the steamboat Fashion ashore; we met the Lady Elgin on the same trip in Lake Huron with one of her pipes blown down.

The flange of the wheel to a steamboat is fastened on the shaft by a groove in the shaft and a key driven into the groove between the shaft and the flange.

Question by Mr. Emmons. Is it a frequent or unfrequent thing for the flanges of steamboat wheels to get loose and require keying up?

[Objected to by Mr. Newhall.]

Answer. It frequently happens that the flanges get loose, and in sea-way it frequently happens that you can't fasten them. In still water you can get into the wheel and key them up. In a heavy sea you can't. I have been aboard of a boat on one or two occasions when the flanges got loose. On one occasion we keyed the wheel up, on the other we couldn't, until we got to the mouth of the Detroit River.

The loosening of these keys is something all steamboats are liable to. They might run all their lives and not have it happen, and it might happen the first trip. I know of nothing yet which has been contrived to guard against the loosening of the flange. They are keyed now as they always have been. I should think the flanges more liable to unkey in a heavy sea than in smooth water, there is more friction and strain. The Fashion is about 300 tons burthen.

Question by Mr. Emmons. Suppose that vessel to be laboring in a disabled condition in a heavy sea, do you think it would do her any good to throw overboard 40 tons of freight, or would the throwing overboard of that amount of freight have a tendency to ease the vessel?

[Objected to by Mr. Newhall.]

Answer. Every pound you throw overboard assists her. I mean to be understood that, if the vessel is laboring in a heavy sea, every pound you throw out of her assists her if she is leaking, until you get her in good ballast trim. A steamboat, when she is empty, is considered in good ballast trim, her engine and machinery being sufficient for that purpose, and it would have a tendency to assist her, whether she is leaking or not. I have had occasion to do it frequently when the vessel was not leaking. If a vessel was at an anchor, it would still help her to lighten her. I once had occasion to do it when at anchor off Chicago. And it is generally considered good seamanship to do so.

Cross-examined by Mr. Newhall.

I think the Fashion came out in 1848 or 1849; I don't remember exactly the year. The flange is keyed up, when it becomes loose, by driving the key in with a maul. When they are originally put on, sometimes the flange is heated and the key is driven in. You prevent its coming out again by driving it in tight. You drive it in as tight as possible, to prevent its coming out again; yet they often work out notwithstanding.

Witness' fees $1 60; paid by Mr. Emmons.

JOHN W. WEBSTER.

(*Deposition of Robert Jones.*)

Robert Jones, being duly sworn on the part of the respondent, testified as follows:—

I have known the steamboat Fashion a number of years. I am a seaman; have sailed about eighteen years, part of the time on propellers, and part of the time on steamers. Have been on steamboats part of two seasons, and five or six years on a propeller. I am now master of a steam propeller. Have been on the Fashion. I came up on her from Presque Isle this spring, and have been *been* aboard of her before. I have always considered her a good sea-boat, and that is her reputation. I know the occasion of her going ashore in June, 1854, near Chicago. I saw her on the beach as we were going up to Chicago. This was some time last summer; early in the season—I can't remember the precise time. I remember a storm just before I saw her on the beach. We had a very heavy blow from the eastward on Lake Erie, as we were bound up, which stove in one of our gangways. On this trip we were in Presque Isle, where we saw a steamboat pass, bound down, with one of her smoke-pipes carried away.

[The above is taken, subject to objection by Mr. Newhall.]

The flanges to the wheel of a steamboat are keyed on.

Question by Mr. Emmons. Is it a frequent or infrequent thing for the flanges of steamboat wheels to get loose and require keying up?

[Objected to by Mr. Newhall.]

Answer. It is very frequent. I have known the cranks on the propeller Niagara, which are very similar, to get loose and require keying up. They are more liable to get loose in heavy weather than in calm weather. It may occur in a gale of wind, when you can't avoid it.

Question by Mr. Emmons. Suppose a vessel, the steamboat Fashion for instance, had been laboring in a disabled condition in a heavy sea, do you think it would do her any good to get rid of forty tons of freight?

[Objected to by Mr. Newhall.]

Answer. I think it would, but it would depend upon how she was loaded; if she was loaded deep, she might aid her; if that was all her freight, it might be a question, unless she was making water. If she was making water, I think it would be a seaman's duty to lighten his boat. Every pound that you throw off under such circumstances, helps the vessel. If the sea was heavy, it would help her, whether she was at anchor or under way. I have known it to be done in both instances.

Cross-examined by Mr. Newhall.

The Fashion may be about 300 tons. I should think a steamboat like the Fashion ought to have two pumps. I have three pumps on

my propeller. Should think the Fashion should have two hand-pumps. My propeller is 450 tons burthen. She has an engine-pump in addition, which works by the engine. I should think this pump would throw more water than the three hand-pumps. The engine-pump of the Fashion should work by the engine, and should throw more water than our engine-pump, as the capacity of the steamboat pump is larger than a propeller's. The Fashion should have two hand-pumps, and an engine-pump of larger capacity. The Niagara is 450 tons. In loading her, we carry one-fourth, and perhaps more, on deck, and three-fourths in the hold. A steamboat, with a full cargo, carries about one-third on deck, and about two-thirds under deck, according to the cargo. The cargo is placed according to the build of the boat. I usually put heavy articles in the hold, light and bulky articles on deck. A heavy cargo on deck and light in hold, or a light cargo on deck and heavy in the hold, would make a vessel labor. The cargo should be divided in right proportion, to make the vessel work easy in a sea. In propellers and steamboats on the lakes, it is customary to stow freight between decks, and it is considered the same as in the hold. They differ from sail vessels in this particular: they have shelter. Goods stored between decks are the same, and have the same rights and the same contribution for average, to my knowledge, as hold goods. I have known flanges to get loose in a smooth sea as well as heavy sea. The way to prevent its happening again, is to key them down well, and they might then last a year or two, and might come loose sooner. They are liable to loosen at any time.

Watches on steamboats and propellers are divided into two—into larboard and starboard watches. A boat like the Fashion ought to have fifteen men engaged in navigating the vessel, including two competent engineers. There ought to be about six men on a watch in a clear night, consisting of a mate of the watch, wheel's man, one of the engineers, fireman, and two deck hands.

In a violent storm, we generally have as watches all hands on deck, or so that we can use them if necessary.

Re-examined by Mr. Emmons.

Watches on propellers and steamboats are the same whatever their capacity. It is not necessary to have more than ordinary watch on deck in stormy weather unless it is necessary to use them. The ordinary watch can take care of the vessel in any kind of weather, unless she wants trimming up or something unusual is to be done. I don't mean to say that the capacity of a steamboat engine pump ought necessarily to be of more capacity than those worked on propellers, but it is constructed differently, and is generally of large capacity. I do not know how many pumps the Fashion had.

Question by Mr. Emmons. In vessels of the same class, do they not sometimes put in more or less hand pumps, and does not the

necessity of them depend somewhat upon where the bilge-water flows to in the vessel?

[Objected to by Mr. Newhall.]

Answer. Some put more or less. Some captains put more than is necessary. Sailing vessels always have two pumps, and some have three. In steamboats there is no rule to go by, as it is generally considered that the engine pump is sufficient to keep them clear. They always have other pumps besides, but there is no regular rule to go by, otherwise they would have nothing if the engine pump gave out.

Question by Mr. Emmons. Suppose the steamer Fashion's bilge injection pump to be so constructed as to be capable of throwing water out of the hold, and then suppose she had a bilge pump in addition capable of being worked by steam or hand at pleasure, do you think that would be all the pumps she would need?

[Objected to by Mr. Newhall.]

Answer. I think that would be sufficient for a boat of her size and tonnage.

Cross-examined by Mr. Newhall.

In ordinary circumstances they would be sufficient for her, but if she was making water badly they would not keep her clear. This is what I mean to to be understood in my answer to Mr. Emmons's question. In case the engine was disabled, and she was making water, she would have only one pump, and that would not keep her clear.

Witness fees paid by Mr. Emmons, $1 60.

ROB'T A. JONES.

(*Deposition of Dougal Renton.*)

August 30, 1855.

Parties by their counsel present.

Dugan Renton, being called on the part of the respondent and duly sworn, testified as follows: I am an engineer and machinist in the employ of the Milwaukee and Mississippi R. R Company. I know the steamboat Fashion, and remember the occasion of her having a new shaft put into her last season at Chicago. Think it was six weeks or two months previous to this date of last year, but am not positive. I remember the occasion of her going ashore last year near Chicago. The shaft was put in before that. I was engaged in putting in the shaft. I cut one key bed in the shaft and two key beds in one of the flanges, or straightened them out, I don't remember which. John Pettee and Abel Crawford were engaged with me in the work. John Pettee filled the keys. There were two keys to

each flange, I guess. I am pretty sure of it. I speak from memory, and am almost certain. The keys were from forty-five to sixty degrees apart from centre to centre. The key beds were dressed out smooth. The way in which such a piece of work is done is to dress out the key beds smooth. The flange is usually put on the shaft. The place of the key bed in the flange is marked upon the shaft, the flange is then removed and the key bed is cut in the shaft to correspond with the key bed in the flange ; and I think the flange was fitted to the shaft in this way in this case, but I didn't see it done. The reason why I think it was done so in this case is because the shaft was elevated upon the wharf with blocks for that purpose. After the key beds are cut in both the flange and shaft, the flange is placed upon the shaft, and dressed wooden patterns are made and fitted to the beds, the wooden patterns are then sent to the blacksmith and iron keys are forged to correspond with the wooden patterns. Thomas Hetchelwood forged the keys for the Fashion. He is a first-rate workman. After the keys are forged they are driven into the key beds with a hand hammer, and driven out again, and the points in the keys that bear upon the beds are filed off, until the keys bear over the entire surface and fit the bed accurately. John Pettee is a good mechanic. (He did similar work last spring on Ward's steamers.) I did not see the job on the Fashion done. I was not there at the time. I was not there when the keys were put in, though I helped cut the key beds. Part of the work was done on the dock and part on the boat, and part in the shop. The work on the boat I didn't see done. I examined the shaft and flanges after the boat was wrecked. I mean the same shaft we were at work on. I came to a conclusion as to the reason of the loosening of the flanges upon the shaft—[Objected to by Mr. Newhall, and the following testimony is also taken subject to objection.] The edge that forms the recess of the key bed was broken off in one of the key beds in the shaft, and next to the engine. The metal was torn out from the shaft, as though the wheel had been struck by a log of wood or a heavy sea when the engine was in full force. If the keys had become loosened and gone out, the appearance of the shaft would have been different. The edges of the key beds are all filed and sharp, and they would have been worked off and the beds would have been rounded over. I refer to the key bed that was torn out. I remember the storm in which the Fashion went ashore. It was a very severe storm.

Cross-examined.

I know the day she went ashore, because the next day the engineer came to the shop. I know the day only by hearsay. I never

was an engineer on a steamboat. The key bed was broken out of the shaft next to the engine where the inner flange is fitted.

DOUGAL RENTON.

Witness fees paid by Mr. Emmons, $1 60.

Subscribed and sworn to before me this 30th day of August, A. D., 1855.

E. L. BUTTRICK.
U. S. Com'r.

(*Deposition of William B. Hibbard.*)

William B. Hibbard sworn in court, called by respondents.

In the early part of June, 1854, there was a violent storm. I came from this side of St. Clair River, at Port Huron. It continued about sixty hours before we could land. I was in the propeller Edith. We anchored in the Bay at Milwaukee probably thirty hours. It was a very severe gale. It was the severest gale I ever knew for the summer season. Saw the Lady Elgin; she lost one of her smoke-pipes. Saw the schooner Marvin ashore at the south pier at Milwaukee. It was a very severe gale.

Cross-examined.

There were a good many vessels at Milwaukee at this time. We came into the bay here about two o'clock in the morning. The gale was that kind that a vessel out should seek a shelter.

Respondent read the certificate of inspection annexed to the deposition of Thomas C. James, a witness sworn on the part of the libellants, under objections on the part of the libellants.

And afterwards, to wit, on the thirteenth day of the said term, to wit, on the nineteenth day of November, A. D. 1855, the following proceedings were had, to wit:—

(*Decree.*)

This day came the parties by their advocates, and on consideration of the pleadings, proofs, and the arguments of the advocates thereon, it is ordered, adjudged, and decreed by the Court, and this Court doth now here order, adjudge, and decree that the libel of these libellants be and hereby is dismissed without prejudice as to any subsequent proceedings, and that the said libellants pay the costs to be taxed, and in default of the payment thereof within ten days, that an execution be issued against them and Albert Wise, their stipulator, for the same.

A. G. MILLER.

And afterwards, to wit, on the twenty-ninth day of November, A. D. 1855, the libellants by their proctor, Mr. Newhall, filed the following petition of appeal:—

(*Appeal.*)

The appeal of Rufus Allen, George W. Allen, Edward P. Allis, William Allen, and Cyrus Whitcomb, the above named libellants and appellants, respectfully showeth that on the fourth day of August, one thousand eight hundred and fifty-four, the above named Rufus Allen, George W. Allen, Edward P. Allis, William Allen, and Cyrus Whitcomb, filed their libel in the District Court of the United States for the District of Wisconsin against the Steamboat Fashion, her engine machinery, boats, tackle apparel, and furniture, in a cause civil and maritime, for the recovery of damages alleged to have been sustained by them by the loss of divers goods, wares, and merchandise belonging to them and shipped by them on board the said steamboat Fashion, on or about the sixth day of June, one thousand eight hundred and fifty-four, at the port of Two Rivers, in the State of Wisconsin, a part thereof to be transported from the said port of Two Rivers to the port of Milwaukee in the State of Wisconsin, and the remainder thereof to be transported from the said port of Two Rivers to the port of Chicago, in the State of Illinois. And that the said steamboat Fashion was arrested upon process issued upon said libel, and was discharged upon the said Henry L. Newberry's filing his claim and entering into stipulation. And that the said Henry L. Newberry thereafter filed his answer to said libel, and that such further proceedings were had in the said cause that on the nineteenth day of November, one thousand eight hundred and fifty-five, a final decree was made and pronounced therein by the said District Court, wherein it was in substance adjudged that the libel of the said libellants be dismissed, and that the said libellants pay the costs to be taxed: Which said decree of the said District Court is, as these appellants are advised, erroneous and ought to be reversed. Whereupon these appellants appeal from the whole of the said decree of the said District Court to the Supreme Court of the United States, and respectfully pray that the said decree of the said District Court, and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the said District Court and every part thereof may be reversed, and that such other decree may be made by this Court as shall be agreeable to equity and good conscience, and these libellants restored to all things which they have lost by the said decree, and that the said

appellee be condemned to pay to these appellants their costs and damages in the premises.

Dated, Milwaukee, November 29th, 1855.

RUFUS ALLEN,
GEO. W. ALLEN,
EW'D P. ALLIS,
WM. ALLEN,
CYRUS WHITCOMB,
By GEO. W. ALLEN.

BENJ. NEWHALL,
Proctor.

A. C. MAY,
Advocate.

Whereupon it is ordered by the Court that an appeal from the decree in this cause to the Supreme Court of the United States, be and hereby is allowed, on the said libellants giving bond with surety in the sum of five hundred dollars, and appeal bond filed, as follows:—

(*Appeal Bond.*)

Know all men by these presents, that we, George W. Allen, of the city of Milwaukee, in the State of Wisconsin, and Lemuel W. Weeks, of the same place, are held and firmly bound, jointly and severally, unto the above named Henry L. Newberry, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Henry L. Newberry, the above named appellee, his executors, administrators, or assigns. To which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this twenty-ninth day of November, one thousand eight hundred and fifty-five.

Whereas, Rufus Allen, George W. Allen, Edward P. Allis, William Allen, and Cyrus Whitcomb, the above named appellants, have prosecuted an appeal to the Supreme Court of the United States, at the City of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the District Court of the United States for the District of Wisconsin, on the nineteenth day of November, one thousand eight hundred and fifty-five:

Now, therefore, the condition of this obligation is such that if the above named appellants, Rufus Allen, George W. Allen, Edward P. Allis, William Allen, and Cyrus Whitcomb, shall prosecute their appeal to effect, and answer all damages and costs if they fail to make

their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

GEO. W. ALLEN, [SEAL.]
L. W. WEEKS. [SEAL.]

Sealed and delivered, and taken and acknowledged, this 29th day of November A. D. 1855, before me,

B. K. MILLER,
Clerk & Comm'r.

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

Lemuel W. Weeks above named, being duly sworn, deposes and says, that he is worth the sum of five thousand dollars, over and above all debts and liabilities, and in property not exempt from execution.

L. W. WEEKS.

Sworn to before me this 29th day of November, A. D. 1855, before me,

B. K. MILLER,
Clerk U. S. Dist. Court, Wisconsin.

November 29, 1855, this bond and the sureties approved and appeal allowed.

A. G. MILLER,
Judge.

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

I, Benjamin K. Miller, Clerk of the District Court of the United States of America for the District of Wisconsin, do hereby certify the foregoing, contained in eighty-nine pages, as numbered, to be a true copy as of record, of the libel, answer, exhibits, proofs, and proceedings, in the case of Rufus Allen, George W. Allen, Edward P. Allis, William Allen, and Cyrus Whitcomb, libellants, against the Steamboat Fashion, her engine, machinery, boats, tackle, apparel, and furniture, Henry L. Newberry, claimant.

In testimony whereof, I have hereunto set my hand, and duly affixed the seal of said Court at Milwaukee, this 24th day of December, in the year of our Lord one thousand eight hundred and fifty-five, and of our independence the eightieth.

[SEAL.] B. K. MILLER,
Clerk.

UNITED STATES OF AMERICA, ss.

To Henry L. Newberry.

Whereas, Rufus Allen, George W. Allen, Edward P. Allis, William Allen, and Cyrus Whitcomb, have lately appealed to the Supreme Court of the United States from a decree lately rendered in the District Court of the United States of America for the District of Wisconsin, made in favor of you, the said Henry L. Newberry, claimant of the Steamboat Fashion, her engine, machinery, boats, tackle, apparel, and furniture, against the said Rufus Allen, George W. Allen, Edward P. Allis, William Allen, and Cyrus Whitcomb, and have filed the security required by law: you are therefore hereby cited to appear before the said Supreme Court, at the City of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Milwaukee, in the said District of Wisconsin, this twenty-ninth day of November, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States the eightieth.

A. G. MILLER,
Judge of the District U. S. for the Wisconsin District.

District of Wisconsin, ss.

Charles C. Cotton, being duly sworn, saith that he served on the appellee, Henry L. Newberry, on the 30th day of November, 1855, a copy of the appeal and a copy of the citation filed in this cause with the Clerk of the District Court of the United States for the District of Wisconsin, on said thirtieth day of November, by delivering said copy of the citation to Emmons & Van Dyke, proctors for said appellee, personally, and by leaving said copy appeal for said appellee in the Clerk's office of the District Court aforesaid.

CHARLES C. COTTON.

Marshal's fees, service $2 50.

Subscribed and sworn to before me this 30th day of November, A. D. 1855.

B. K. MILLER,
Clerk U. S. D. Court, Wisconsin.

Filed 31 May, 1856.